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September 2018

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**V. POTPOURRI**

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# Executive Orders

## EXECUTIVE ORDER JBE 18-20

Supervision of the Louisiana Real Estate Appraisers Board  
Regulation of Appraisal Management Companies  
Amending Executive Order Number JBE 17-16

WHEREAS, Executive Order Number JBE 17-16, issued on July 11, 2017, directed the Louisiana Real Estate Appraisers Board (“the LREAB”) to submit to the Commissioner of Administration (or the Commissioner’s designee) for approval, rejection, or modification within 30 days of the submission any proposed regulation related to appraisal management company (“AMC”) compliance with the customary and reasonable fee requirement of La. R.S. 37:3415.15(A), along with its rulemaking record, to ensure that such proposed regulation would serve Louisiana’s public policy of protecting the integrity of the residential mortgage appraisals by requiring that the fees paid by AMCs for an appraisal are customary and reasonable;

WHEREAS, in November 2017, a designee of the Commissioner of Administration reviewed and approved the proposed rule, § 31101 of Part LXVII of Title 46 of the Louisiana Administrative Code, in accordance with Executive Order Number 17-16;

WHEREAS, Act No. 623 of the 2018 Regular Session of the Legislature of Louisiana establishes an Occupational Licensing Review Commission (“the Commission”) beginning January 1, 2019. La. R.S. 37:45 provides that the Commission is responsible for the active supervision of state executive branch occupational licensing boards, including the LREAB, “to ensure compliance with state policy in the adoption of occupational regulations by an occupational licensing board”; and

WHEREAS, active supervision of the promulgation of rules relating to AMC compliance with the customary and reasonable fee requirement of La. R.S. 37:3415.15(A) under Executive Order Number 17-16 remains necessary until the effective date of Act No. 623 of the 2018 Regular Session of the Legislature of Louisiana.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 1 of Executive Order Number 17-16 is hereby amended to read as follows:

Prior to finalization of a settlement with or the filing of an administrative complaint against an AMC regarding compliance with the customary and reasonable fee requirements of La. R.S. 37:3415.15(A), such proposed action and the record thereof shall be submitted to the Division of Administrative Law (DAL) for approval, rejection, or modification. Such review is to ensure fundamental fairness and that the proposed action serves the interests of the State of Louisiana. The LREAB shall maintain a contract with the DAL to establish the procedure for this review.

SECTION 2: Section 2 of Executive Order Number 17-16 is hereby amended to read as follows:

The LREAB is directed to submit to the Commissioner of Administration (or the Commissioner’s designee) for approval, rejection, or modification within 30 days of the submission any proposed regulation related to AMC compliance with the customary and reasonable fee requirement of La. R.S. 37:3415.15(A), along with its rulemaking record, to ensure that such proposed regulation serves the interests of the State of Louisiana. The Commissioner (or his designee) may extend the 30-day review period upon a determination that such extension is needed. The authority of the Commissioner of Administration under this section shall continue in effect, including the obligation to approve, reject, or modify any such proposed LREAB regulation and to direct LREAB to comply with such determination, notwithstanding the submission of such proposed regulation to the Legislature by LREAB as provided by R.S. 49:968.

SECTION 3: This Order will become effective upon signature and Section 2 shall continue in effect until January 1, 2019; Section 1 shall continue in effect unless amended, terminated, or rescinded by the Governor.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 17th day of August, 2018.

John Bel Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1809#003

## EXECUTIVE ORDER JBE 18-21

Flags at Half-Staff—Charles “Charlie” Doerr Lancaster, Jr.

WHEREAS, on August 17, 2018, Charles “Charlie” Doerr Lancaster, Jr. passed away at the age of 74;

WHEREAS, born and raised in New Orleans, Charlie Lancaster attended Holy Name of Jesus and graduated from Jesuit High School where he was a member of its 1960 state championship football team;

WHEREAS, he attended the University of Southwestern Louisiana (now the University of Louisiana-Lafayette) on a track scholarship and later graduated from Loyola Law School where he was a member of the Law Review;

WHEREAS, he practiced law for over forty years and retired as a Major of the Louisiana Army National Guard after serving for twenty-two years;

WHEREAS, he represented Metairie in the state House for 32 years, and his decades of work led to his induction into the Louisiana Political Hall of Fame in 2018;

WHEREAS, he valued relationships and respect over partisanship and throughout his life maintained close

friendships with people of all backgrounds and political affiliations;

WHEREAS, he was predeceased by his beloved wife, Edith "Patches" Shannon Lancaster, and his parents, Charles D. Lancaster Sr. and Helen Stafford Lancaster and is survived by his two children, daughter Edith Helen "Dee Dee" Lancaster and son Charles D. Lancaster III; a brother, William Bradford Lancaster (Suzy); two sisters, Helen Lancaster Bailey (Neil) and Marjorie Lancaster Crowell (Mark); a niece, Blair Redfield Lancaster; his brothers-in-law; George William Shannon, Jr.(Janet), Robert MacKinnon Shannon, Jon O'Hara Shannon (Roman), James Cahill Shannon (Jill); his grandson, Duncan Stewart Wallace; and

WHEREAS, Charlie Lancaster lived his life with integrity and devoted to public service, leaving a legacy in Louisiana for generations to come.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: As an expression of respect and to honor the life of Charles Doerr Lancaster, Jr., the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol until sunset on Friday, August 24, 2018.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Friday, August 24, 2018, unless amended, modified, terminated, or rescinded prior to that date.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 23th day of August, 2018.

John Bel Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1809#057

#### **EXECUTIVE ORDER JBE 18-22**

Flags at Half-Staff—John Sydney McCain, III

WHEREAS, on August 25, 2018, John Sydney McCain, III passed away at the age of 81;

WHEREAS, born on August 29, 1936, at Coco Solo Naval Station, John McCain was the son and grandson of career U.S. Naval officers and graduated from the Naval Academy at Annapolis in 1958;

WHEREAS, after volunteering for duty in Vietnam, McCain's plane was shot down in 1967 and he endured more than five years at Hoa Loa prison in North Vietnam;

WHEREAS, John McCain was assigned as the Navy's liaison to the U.S. Senate in 1976 and was elected to the United States House of Representatives shortly thereafter in 1982;

WHEREAS, John McCain was elected to the United States Senate in 1986 and served there until his death, most recently serving as chairman of the Armed Services Committee;

WHEREAS, John McCain established a reputation of independence as he pushed to reform the tobacco industry and campaign finance, did not support a constitutional ban on same-sex marriage, and delivered the decisive vote to prevent the repeal of Medicaid Expansion, which has provided health care coverage for over 476,000 people in Louisiana;

WHEREAS, during his 35 years representing Arizona in Congress and during his two presidential runs, John McCain remained true to his character and value system over partisanship;

WHEREAS, John McCain is survived by his wife Cindy, his sons, Douglas, Andrew, John, and James, and his daughters, Sidney, Meghan, and Bridget, as well as their families; and

WHEREAS, Senator John McCain was a great American patriot and statesman who put his country first throughout his life of service and leaves a lasting legacy of staying true to one's principles and putting country over politics.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: As an expression of respect and to honor the life of John Sydney McCain, III, the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol and all state buildings until sunset on Sunday, September 2, 2018.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Sunday, September 2, 2018, unless amended, modified, terminated, or rescinded prior to that date.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 27th day of August, 2018.

John Bel Edwards  
Governor

ATTEST BY  
THE GOVERNOR  
Tom Schedler  
Secretary of State  
1809#058

# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Structural Pest Control Commission

Proficiency Testing (LAC 7:XXV:113 and 117)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), the Commissioner of Agriculture and Forestry and Louisiana Structural Pest Control Commission declare an emergency to exist and hereby adopt by emergency process the attached regulation requiring proficiency testing for all structural licensees and registered technicians. R.S. 3:3366 grants the Structural Pest Control Commission the authority to adopt rules and regulations "to protect the interests, health, safety, and welfare of the public." In order to be in compliance with state and federal laws regarding testing and licensure, the commissioner believes proficiency testing is necessary to protect the health and safety of the public. This Emergency Rule was initially published at LR 43:9-10.

This Emergency Rule shall become effective upon signature, and shall remain in effect for 120 days, unless renewed or until the permanent rules and regulations become effective.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXV. Structural Pest Control

#### Chapter 1. Structural Pest Control Commission

#### §113. Registration of Employees; Duties of Licensee and Registered Employee with Respect to Registration

A. - O. ...

P. Each registered technician shall participate in an entire continuing education program as a condition of maintaining his or her status as a registered technician at least once annually (July 1 to June 30).

1. Each continuing education program, minimum of four hours of technical training, shall be approved in advance by the department.

2. Each continuing education program shall be a minimum of one hour in length per phase.

3. Documentation of the technician attendance and participation shall be forwarded to the department and a copy retained at the technician's place of employment.

4. All registered technicians must take and pass the registered technician examination and/or the structural pesticide proficiency test in order to maintain his or her status as a registered technician. Any registered technician who has taken and passed the registered technician examination prior to January 1, 2017, but has not taken and passed the structural pesticide proficiency test on or by December 31, 2017, must take the structural pesticide proficiency test in order to maintain his or her status as a registered technician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366, 3368 and 3369.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:327 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:956 (November 1989), LR 32:797 (May 2006), repromulgated LR 32:1016 (June 2006), amended LR 35:207 (February 2009), LR 37:279 (January 2011), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 39:301 (February 2013), LR 42:213 (February 2016), LR 44:

#### §117. Obligations of the Licensee\Permittee

A. - D. ...

E. Maintenance of a commercial applicator certification by a licensee

1. A licensee shall maintain his commercial applicator certification in current status by:

a. attending a continuing educational program for recertification approved by the department;

b. recertification at least once every three years; such recertification shall be completed by December 31 of the year preceding the third anniversary of either the original certification or the most recent recertification;

c. a minimum of six hours of technical training which shall include but not limited to the phases of general pest control, termite control and commercial vertebrate control;

d. a minimum of six hours of technical training for the phase of fumigation.

e. All structural licensees must take and pass the structural licensee examination and/or the structural pesticide proficiency test in order to maintain his or her commercial application certification. Any structural licensee who has taken and passed the structural licensee examination prior to January 1, 2017, but has not taken and passed the structural pesticide proficiency test on or by December 31, 2017, must take the structural pesticide proficiency test in order to maintain his or her commercial application certification.

2. A licensee attending an approved recertification seminar shall attend the entire approved program; otherwise the licensee shall not be recertified at this approved seminar.

3. Time and location for each licensee recertification can be obtained by calling or writing to the department;

F. - Q. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366 and 3:3368.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:327 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:956 (November 1989), LR 21:930 (September 1995), LR 23:855 (July 1997), LR 26:2437 (November 2000), LR 29:1062 (July 2003), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 30:196 (February 2004), LR 31:2761 (November 2005), LR

35:1468 (August 2009), LR 37:280 (January 2011), LR 39:301 (February 2013), LR 42:214 (February 2016), LR 44:

Mike Strain, DVM  
Commissioner

1809#012

## **DECLARATION OF EMERGENCY**

### **Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Advisory Commission on Pesticides**

#### **Certification of Commercial Applicators (LAC 7:XXIII.711)**

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached regulation requiring proficiency testing for all commercial applicators in 2018. R.S. 3:3203(A) provides that the “commissioner shall adopt such rules and regulations as are necessary to implement the provisions of this Chapter, including but not limited to rules and regulations governing the registration, distribution, sale, offering for sale, and application of pesticides...” Additionally, R.S. 3:3242 provides that the “commissioner by rule shall provide for the issuance of annual certification cards.” In order to be in compliance with state and federal laws regarding testing and licensure, the commissioner believes proficiency testing is necessary to protect the health and safety of the public. This Emergency Rule was initially published at LR 43:9.

This Emergency Rule shall become effective upon signature, and shall remain in effect for 120 days, unless renewed or until the permanent rules and regulations become effective.

#### **Title 7**

### **AGRICULTURE AND ANIMALS**

#### **Part XXIII. Pesticides**

#### **Chapter 7. Examinations, Certification and Licensing**

##### **Subchapter B. Certification**

##### **§711. Certification of Commercial Applicators**

A. - E. ...

F. The commissioner shall issue a certification card to each commercial applicator showing the categories or subcategories in which the applicator is certified. This certification card shall expire on December 31 of each year. Each person wishing to renew a certification card shall do so by submitting an application form prescribed by the commissioner and by submitting the proper fee.

1. In order to renew a certification card, a commercial applicator shall take and pass a commercial applicator proficiency test. All commercial applicators who have not passed the commercial applicator proficiency test on or by December 31, 2017, shall take and pass the commercial applicator proficiency test before their renewal application and/or recertification will be processed.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:324.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:179 (April 1983), amended LR 10:193 (March 1984), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 18:953 (September 1992), LR 19:735 (June 1993), LR 20:641 (June 1994), LR 21:928 (September 1995), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, Advisory Commission on Pesticides, LR 23:193 (February 1997), LR 24:280 (February 1998), LR 28:39 (January 2002), LR 32:794 (May 2006), repromulgated LR 32:1011 (June 2006), amended LR 35:627 (April 2009), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3471 (December 2011), LR 44:

Mike Strain, DVM  
Commissioner

1809#011

## **DECLARATION OF EMERGENCY**

### **Department of Children and Family Services Licensing Section**

#### **Residential Home (LAC 67:V.7109, 7111, and 7119)**

The Department of Children and Family Services (DCFS) has exercised the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), to amend LAC 67:V.7109, 7111, and 7119. This declaration is necessary to extend the original Emergency Rule since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. This Emergency Rule extension is effective on September 28, 2018 and will remain in effect until the final Rule becomes effective.

The department considers emergency action necessary in order to clarify the intent of existing statute and revise the residential home licensing standards to incorporate regulations to protect the safety and well-being of children residing in residential homes.

#### **Title 67**

### **SOCIAL SERVICES**

#### **Part V. Child Welfare**

##### **Subpart 8. Residential Licensing**

##### **Chapter 71. Residential Homes, Type IV**

##### **§7109. Critical Violations/Fines**

A - A.4. ...

5. §7111.D.1.a. if sections noted in §7111.D.7. also cited or §7111.D.1.b.i. if sections noted in §7111.D.7. also cited or §7111.D.2—critical incident reporting; and/or

A.6. - H.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Licensing Section, LR 43:258 (February 2017), amended LR 43:1725 (September 2017), LR 44:

##### **§7111. Provider Requirements**

A. - B.4.b.iii. ...

iv. notification signed and dated from OJJ indicating youth is appropriate for non secure placement;

v. - xxiii. ...

xxiv. for residents placed from other states, proof of compliance with the Interstate Compact on Juveniles, the Interstate Compact on the Placement of Children, and the

Interstate Compact on Mental Health, when indicated. Proof of compliance shall include clearance letters from the compact officers of each state involved;

B.4.c. - C.8. ...

#### D. Incidents

1. Critical and Other Incidents. The provider shall have and adhere to written policies and procedures for documenting, reporting, investigating, and analyzing all incidents and other situations or circumstances affecting the health, safety, or well-being of a resident or child of a resident.

a. The provider shall submit a written report of the following incidents to the Licensing Section within one calendar day, excluding when the incident occurs on a weekend or state holiday. If the incident occurs on a weekend or state holiday, provider shall submit a written report on the first working day following the weekend or state holiday.

i. elopement or unexplained absence of a resident or child of a resident;

ii. use of personal restraints with the exception of escorting;

iii. injuries of unknown origin;

iv. evacuation of residents or children of residents;

v. attempted suicide;

vi. serious threat or injury to the health, safety, or well-being of the resident or child of a resident;

vii. injury with substantial bodily harm while in seclusion or during use of personal restraint; or

viii. unplanned hospitalizations, emergency room visits, and emergency urgent care visits.

ix. any other unplanned event or series of unplanned events, accidents, incidents and other situations or circumstances affecting the health, safety, or well-being of a resident or child of a resident.

b. The program director or designee shall:

i. immediately verbally notify the legal guardian of any incident noted in Section 7111.D.1.a.i-ix.;

ii. immediately verbally notify the appropriate law enforcement authority in accordance with state law;

iii. if requested, submit a final written report of the incident to the legal guardian as soon as possible, but no later than five working days of the incident;

iv. conduct an analysis of the incident and take appropriate corrective steps to prevent future incidents from occurring;

v. maintain copies of any written reports or notifications in the resident's or child of a resident's record;

vi. ensure that a staff person accompanies residents and children of residents when emergency services are needed.

2. The provider shall verbally notify state office Licensing management staff immediately in the event of a death and follow up with a written report within one calendar day of the verbal report. If the death occurs on a weekend or State holiday, provider shall verbally notify state office Licensing management staff as soon as possible on the first working day following the weekend or State holiday and follow up with a written report the same day as verbal notification. The provider shall immediately verbally notify the legal guardian and law enforcement in the event of a death.

3. - 5.h....

i. date and time the legal guardian, licensing, and, if applicable, law enforcement were notified;

j. - k. ...

1. documentation of actions taken by the provider regarding staff involved in the incident to include corrective action.

6. A copy of all written reports shall be maintained in the resident's or child of a resident's record.

7. Critical incidents are noted in §7111.D.1.a.iv-vi and ix, §7111.D.2., and §7111.E.2.

E. - E.2. ...

3. After reporting suspected abuse and/or neglect as required by Louisiana law, provider shall submit a written report to the licensing section immediately or the next working day if the suspected abuse and/or neglect occurred on a weekend or state holiday. At a minimum the report shall contain:

E.3.a. - J.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:811 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:979, 984 (April 2012), LR 42:221 (February 2016), amended by the Department of Children and Family Services, Licensing Section, LR 43:261 (February 2017), LR 43:1725 (September 2017), LR 44:

### §7119. Physical Environment

A. - A.12. ...

13. No interior door shall have a lock or fastening device that prevents free egress to the exterior of the home from the interior. No exterior door shall have a lock or fastening device that prevents free egress from the interior unless the provider has documentation of written annual approval from the Office of State Fire Marshall (OSFM).

B. - P.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Service, LR 36:828 (April 2010), amended by the Department of Children and Family Services, Division of Programs, Licensing Section, LR 38:985 (April 2012), amended by the Department of Children and Family Services, Licensing Section, LR 43:285 (February 2017), LR 44:

Marketa Garner-Walters  
Secretary

1809#015

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices—Assessment Programs and Performance Standards (LAC 28:XI.5701, 6803, and 6813)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:XI, Subpart 3 in *Bulletin 118—Statewide Assessment Standards and Practices*. The revisions outline performance level cut scores for the LEAP



2025 United States history end-of-course assessment. This emergency action is necessary in order to ensure the timely release of 2018-2019 school performance scores (SPS) as required by R.S. 17:24. This also ensures that Louisiana is in compliance with its approved Louisiana Every Student Succeeds Act (ESSA) plan which, if not in place, could impact federal funding. This Declaration of Emergency, effective August 15, 2018, is for a period of 120 days from adoption, or until finally adopted as Rule.

**Title 28  
EDUCATION**

**Part XI. Accountability/Testing**

**Subpart 3. Bulletin 118—Statewide Assessment  
Standards and Practices**

**Chapter 57. Assessment Program Overview**

**§5701. Overview of Assessment Programs in Louisiana  
[Formerly LAC 28:CXL.701]**

A. Norm-Referenced and Criterion-Referenced Testing Programs Since 1986

Name of Assessment Program	Assessment Population	Administered
<b>Kindergarten Screening</b>		
* * *		
<b>Norm-Referenced Tests (NRTs)</b>		
* * *		
<b>Criterion-Referenced Tests (CRTs)</b>		
* * *		
EOCT	Geometry	fall 2009-summer 2017
EOCT	Biology	fall 2010-spring 2018 (continued for graduating seniors and retesters in 2018-2019 only)
EOCT	Applied Algebra I form	spring 2011-summer 2013
* * *		
LEAP 2025	English I English II US History Geometry Algebra I	fall 2017-
LEAP 2025	Biology	fall 2018-
<b>Integrated NRT/CRT</b>		
* * *		
<b>Special Population Assessments</b>		
* * *		

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1534 (July 2005), amended LR 32:235 (February 2006), LR 34:66 (January 2008), LR 34:1352 (July 2008), LR 35:218 (February 2009), LR 36:967 (May 2010), LR 37:858 (March 2011), LR 38:34 (January 2012), LR 39:74 (January 2013), LR 39:1019 (April 2013), LR 40:1319 (July 2014), LR 40:2512 (December 2014), LR 44:465 (March 2018), LR 44:

**Chapter 68. LEAP 2025 Assessments for High School  
Subchapter A. General Provisions**

**§6803. Introduction**

**[Formerly LAC 28:CXL.1803]**

A. - B.5. ...

6. U.S. history.

NOTE: The biology 4-level end-of-course (EOC) test will continue to be utilized through spring 2018; beginning in the 2018-2019 school year, student knowledge and skills of state

academic standards in biology will be measured by the LEAP 2025 biology assessment for students who are taking the course and are not graduating in 2018-2019; like U.S. History in 2017-2018, students who are retesting and are not repeating the course and students graduating in 2018-2019 will be allowed to complete the biology 4-level EOC for one more year. The English III EOC exam will continue to be available for students who entered a high school cohort in 2016-2017 or prior.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:214 (February 2009), LR 36:477 (March 2010), amended LR 38:35 (January 2012), LR 40:2514 (December 2014), LR 44:469 (March 2018), LR 44:

**§6813. Performance Standards**

**[Formerly LAC 28:CXL.1813]**

A. - B.5. ...

\* \* \*

6. U.S. History

<b>U.S. History</b>	
<b>Achievement Level</b>	<b>Scaled-Score Ranges</b>
Advanced	774-850
Mastery	750-773
Basic	725-749
Approaching Basic	711-724
Unsatisfactory	650-710

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:215 (February 2009), amended LR 36:478 (March 2010), LR 37:820 (March 2011), repromulgated LR 37:1123 (April 2011), amended LR 38:35 (January 2012), LR 39:76 (January 2013), LR 39:2444 (September 2013), LR 44:470 (March 2018), LR 44:

Dr. Gary L. Jones  
President

1809#005

**DECLARATION OF EMERGENCY**

**Board of Elementary and Secondary Education**

Bulletin 126—Charter Schools—Teaching Authorizations  
(LAC 28:CXXXIX.2107, 2903, and 2905)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:CXXXIX, Bulletin 126—*Charter Schools*. The revisions align current state policy with recently-enacted legislation of the 2018 Louisiana Legislature related to teaching authorizations of school personnel. This emergency action is necessary in order to provide for the implementation of newly-enacted legislation contained in R.S. 17:7(6) and 17:15, from the 2018 Regular Session of the Legislature. If this action is not taken, then the provisions contained in this legislation, which pertain to criminal background checks of teachers and the issuance of Louisiana teaching authorizations, will not be in effect in a timely manner for the 2018-2019 school year, putting the wellbeing of all students in the state of Louisiana in possible jeopardy. By taking emergency action, this will help to ensure a safe environment

for all children attending school in Louisiana. This Declaration of Emergency, adopted on August 15, 2018, is in effect for a period of 120 days from adoption, or until adopted as a final Rule.

**Title 28**  
**EDUCATION**

**Part CXXXIX. Bulletin 126—Charter Schools**

**Chapter 21. Charter School Governance**

**§2107. Prohibitions**

A. - I. ...

J. A charter school shall not hire anyone:

1. as an administrator, teacher, substitute teacher, bus operator, substitute bus operator, janitor, or other school employee who might reasonably be expected to be placed in a position of supervisory or disciplinary authority over school children who has been convicted of or has pled *nolo contendere* to a crime listed in R.S. 15:587.1(C) unless approved in writing by a district judge of the parish and the district attorney. This statement of approval shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer;

2. as an administrator, teacher, or substitute teacher if any of the following apply to anyone who has been:

a. convicted or has pled *nolo contendere* to any other felony offense even if adjudication was withheld or a pardon or expungement was granted;

b. found to have submitted fraudulent documentation to the board or department as part of an application for a Louisiana teaching certificate or other teaching authorization; or

c. found to have facilitated cheating on any state assessment as determined by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), 17:3981, and 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1371 (July 2008), amended LR 37:874 (March 2011), LR 44:241 (February 2018), LR 44:

**Chapter 29. Charter School Staff**

**§2903. Teaching Authorizations**

A. This Section provides for the rules and regulations in accordance with the Administrative Procedure Act to establish a process for issuing a teaching authorization to anyone seeking employment as an administrator, teacher, or substitute teacher in any school, including a public or nonpublic school that does not require a Louisiana teaching certificate for the employment of a teacher.

B. Teaching authorizations shall be issued in accordance with LAC 28:CLXXI, Bulletin 745.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

**§2905. Criminal History Review**

A. - A.2. ...

3. Repealed.

B. - D.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), 17:3981, and 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008),

amended LR 37:875 (March 2011), LR 39:3068 (November 2013), LR 44:245 (February 2018), LR 44:

Dr. Gary L. Jones  
President

1809#006

**DECLARATION OF EMERGENCY**

**Board of Elementary and Secondary Education**

Bulletin 741—Louisiana Handbook for School  
Administrators—Teaching Authorizations  
(LAC 28:CXV.501 and 504)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:CXV, *Bulletin 741—Louisiana Handbook for School Administrators*. The emergency revisions align current state policy with recently-enacted legislation from the 2018 Louisiana Legislature related to teaching authorizations of school personnel. This emergency action is necessary in order to provide for the implementation of newly-enacted legislation contained in R.S. 17:7(6) and 17:15, from the 2018 Regular Session of the Legislature. If this action is not taken, then the provisions contained in this legislation, which pertain to criminal background checks of teachers and the issuance of Louisiana teaching authorizations, will not be in effect in a timely manner for the 2018-2019 school year, putting the wellbeing of all students in the state of Louisiana in possible jeopardy. By taking emergency action, this will help to ensure a safe environment for all children attending school in Louisiana. This Declaration of Emergency, adopted on August 15, 2018, is in effect for a period of 120 days from adoption, or until adopted as a final Rule.

**Title 28**  
**EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for  
School Administrators**

**Chapter 5. Personnel**

**§501. Criminal Background Checks**

A. - A.3. ...

4. Repealed.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:15, and 17:587.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1265 (June 2005), amended LR 33:431 (March 2007), LR 34:607 (April 2008), repromulgated LR 35:443 (March 2009), amended LR 35:1473 (August 2009), LR 39:2200 (August 2013), LR 44:

**§504. Teaching Authorization**

A. This Section provides for the rules and regulations in accordance with the Administrative Procedure Act to establish a process for issuing a teaching authorization to a person seeking employment as an administrator, teacher, or substitute teacher in any school, including a public or nonpublic school that does not require a Louisiana teaching certificate for the employment of a teacher.

B. Teaching authorizations shall be issued in accordance with LAC 28:CLXXI, Bulletin 745.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

Dr. Gary L. Jones  
President

1809#007

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Teaching Authorizations (LAC 28:LXXIX.123 and 125)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:LXXIX, *Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators*. These emergency revisions align current state policy with recently-enacted legislation from the 2018 Louisiana Legislature related to teaching authorizations of school personnel. This emergency action is necessary in order to provide for the implementation of newly-enacted legislation contained in R.S. 17:7(6) and 17:15, from the 2018 Regular Session of the Legislature. If this action is not taken, then the provisions contained in this legislation, which pertain to criminal background checks of teachers and the issuance of Louisiana teaching authorizations, will not be in effect in a timely manner for the 2018-2019 school year, putting the wellbeing of all students in the state of Louisiana in possible jeopardy. By taking emergency action, this will help to ensure a safe environment for all children attending school in Louisiana. This Declaration of Emergency, adopted on August 15, 2018, is effective for a period of 120 days from adoption, or until adopted as a final Rule.

#### Title 28

#### EDUCATION

#### Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators

#### Chapter 1. Operation and Administration

#### §123. Personnel

A. - A.2. ...

3. The request must include the person's fingerprints in a form acceptable to the bureau.

a. Repealed.

B. - F.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:15, 17:22(6), 17:391.1-391.10, 17:411, and 17:587.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2344 (November 2003), amended LR 31:3074 (December 2005), LR 39:1439 (June 2013), LR 44:

#### §125. Teaching Authorization

A. This Section provides for the rules and regulations in accordance with the Administrative Procedure Act to establish a process for issuing a teaching authorization to a person seeking employment as an administrator, teacher, or

substitute teacher in any school, including a public or nonpublic school, that does not require a Louisiana teaching certificate for the employment of a teacher.

B. Teaching authorizations shall be issued in accordance with LAC 28:CLXXI, Bulletin 745.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

Dr. Gary L. Jones  
President

1809#008

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

Bulletin 745—Louisiana Teaching Authorizations of School Personnel (LAC 28:CLXXI.Chapter 1)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:XXXIX, *Bulletin 745—Louisiana Teaching Authorizations of School Personnel*. These emergency revisions align current state policy with recently-enacted legislation from the 2018 Louisiana Legislature related to teaching authorizations of school personnel. This emergency action is necessary in order to provide for the implementation of newly-enacted legislation contained in R.S. 17:7(6) and 17:15, from the 2018 Regular Session of the Legislature. If this action is not taken, then the provisions contained in this legislation, which pertain to criminal background checks of teachers and the issuance of Louisiana teaching authorizations, will not be in effect in a timely manner for the 2018-2019 school year, putting the wellbeing of all students in the state of Louisiana in possible jeopardy. By taking emergency action, this will help to ensure a safe environment for all children attending school in Louisiana. This Declaration of Emergency, adopted on August 15, 2018, is effective for a period of 120 days from adoption, or until adopted as a final Rule.

#### Title 28

#### EDUCATION

#### Part CLXXI. Bulletin 745—Louisiana Teaching Authorizations of School Personnel

#### Chapter 1. Teaching Authorizations

#### §101. Introduction

A. This Chapter provides for rules and regulations in accordance with the Administrative Procedure Act to establish a process for issuing a teaching authorization (TA) to anyone seeking employment as an administrator, teacher, or substitute teacher in any school, including a public or nonpublic school, that does not require a Louisiana teaching certificate for employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

### **§103. Teaching Authorizations**

A. In accordance with Act 634 of the 2018 Regular Legislative Session, a teaching authorization (TA) shall be required for individuals seeking employment as an administrator, teacher, or substitute teacher in any school, including a public or nonpublic school, that does not require a Louisiana teaching certificate for employment.

B. A TA shall be denied to anyone who has:

1. submitted fraudulent documentation to the Board of Elementary and Secondary Education (the board) or the state Department of Education (LDE);

2. facilitated cheating on any state assessment administered to students; and

3. been convicted of or pled nolo contendere to a felony offense.

C. Eligibility Guideline

1. The applicant is seeking employment in a Louisiana public or nonpublic school in a role in which a Louisiana teaching certificate is not required.

D. A request for a TA shall be submitted directly to the LDE by the employing school governing authority where the individual is seeking employment.

E. A TA is valid only for the period during which the individual is employed by the employing school governing authority making the initial TA request.

F. An individual seeking to change employing school systems must be issued a new TA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

### **§105. Suspension and Revocation of Teaching Authorizations for Criminal Offenses**

A. A Louisiana teaching authorization shall be suspended and revoked if the individual holding the teaching authorization has been convicted of any felony offense whatsoever. If the Louisiana teaching authorization of an individual is expired, and the individual has been convicted of a felony offense, this information shall be reported to the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse by the LDE. Such individuals will be notified per the process outlined in this Section.

B. When the department is notified that any teacher has been convicted of a specific crime:

1. departmental staff shall attempt to contact the educator to inform him/her that the department has information regarding a criminal conviction and is proceeding under this policy to suspend the teaching authorization;

2. the teacher shall have 10 days from the date of notification to provide verification that he/she has not been convicted of a criminal offense. This opportunity for response is intended as a check against mistaken identity or other incorrect information and the requested verification may be provided through a telephone conversation or written correspondence;

3. if the teacher cannot be reached or if his/her employment status cannot be determined, suspension of the authorization shall proceed, as will all other steps in the process outlined in this policy;

4. if the department determines that there is evidence that an educator has been convicted of a criminal offense, the

teaching authorization issued to that educator shall be suspended. The board, the educator, and the employing school system shall be notified that the teaching authorization has been suspended pending official board action per revocation proceedings;

5. the educator shall be notified by any appropriate means of notice that his/her teaching authorization has been suspended and that the teaching authorization will be revoked unless documentation is provided verifying that he/she was not convicted of the crime. The educator shall provide copies of any documentation that verifies his/her identity and refutes the existence of a criminal conviction;

6. if the conviction upon which a teaching authorization has been suspended or revoked is reversed, such action shall be communicated to the board through documentation provided by the applicant. The board may receive such information and order reinstatement of the teaching authorization;

7. upon official action by the board, any educator whose teaching authorization has been revoked shall be notified of such action. The correspondence shall include instructions for and identification of the date when the individual may apply to the board for reinstatement of his/her teaching authorization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

### **§107. Suspension and Revocation of Teaching**

#### **Authorizations Due to Participation in Cheating**

A. A Louisiana teaching authorization shall be suspended and revoked if the individual holding the teaching authorization has been found by the LDE to have participated in *cheating*, as defined in LAC 28:CXXXI.903. If the Louisiana teaching authorization of an individual has expired, and the individual has been found to have participated in cheating, this information shall be reported to the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse by the LDE. Such individuals will be notified per the process outlined in this Section.

B. When the department has determined that any teacher or administrator has been found to have participated in cheating, the following process shall take place.

1. Departmental staff shall attempt to contact the teacher or administrator with notification that the department has information regarding his/her participation in cheating and is proceeding under this policy to suspend the teaching authorization.

2. The teacher or administrator shall have 10 working days from the date of notification to provide verification that he/she has not been found to have participated in cheating. This opportunity for response is intended as a check against mistaken identity or other incorrect information and the requested verification may be provided through a telephone conversation or written correspondence.

3. If the teacher or administrator cannot be reached, suspension of the teaching authorization shall proceed, as will all other steps in the process outlined in this policy.

4. If the department determines that a teacher or administrator was found to have participated in cheating, the teaching authorization shall be suspended. The board, the

educator, and the employing school system shall be notified that the teaching authorization has been suspended pending official board action per revocation proceedings.

5. The educator or administrator shall be notified by any appropriate means that his/her teaching authorization has been suspended and that the authorization will be revoked unless documentation is provided verifying that he/she was not found to have participated in cheating.

6. If the department subsequently determines that the teacher or administrator did not participate in cheating, such action shall be communicated to the department and/or the board through documentation provided by the department. The board may receive such information and may order reinstatement of the teaching authorization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

### **§109. Suspension and Revocation of Teaching Authorizations due to Fraudulent Documentation**

A. A Louisiana teaching authorization shall be suspended or revoked if an educator presents fraudulent documentation pertaining to his/her teaching authorization to the board or the LDE. If the Louisiana teaching authorization of an individual is expired, and the individual has submitted fraudulent documents pertaining to authorization, this information shall be reported to the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse by the LDE. Such individuals will be notified per the process outlined in this Section.

B. The department shall conduct an investigation prior to determining that an educator has submitted fraudulent documentation pertaining to his/her teaching authorization. Upon confirmation of the information investigated, the department shall notify the educator that his/her teaching authorization has been suspended pending official board action per revocation proceedings.

C. Such records review shall be limited to the issue of whether or not the document submitted was fraudulent. The educator shall provide the board with any documentation that will refute the fraudulent nature of the document.

D. The committee of the board shall make a recommendation to the full board, based on documentation received from the department and the teacher, whether the teaching authorization should be revoked. The decision of the board shall be transmitted to the local school board and to the affected educator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

### **§111. Reinstatement of Teaching Authorizations**

A. Reinstatement will never be considered for an educator who has been convicted of a felony for the following crimes.

1. R.S. 14:30, 14:30.1, 14:31, 14:32.6, 14:32.7, 14:32.8, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.1.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:45, 14:46.2, 14:46.3, 14:46.4, 14:78, 14:78.1, 14:80, 14:80.1, 14:81, 14:81.1, 14:81.2, 14:81.3, 14:81.4, 14:82, 14:82.1,

14:84, 14:86, 14:89, 14:89.1, 14:92, 14:93, 14:93.3, 14:93.5, 14:106, 14:283, and 14:286.

B. Reinstatements of teaching authorization shall not be considered until at least five years have elapsed from the date of entry of final conviction, submission of fraudulent documentation, or the date of investigation results regarding the participation in cheating, which resulted in teacher authorization suspension, revocation, or denial.

C. An applicant may apply to the board for reinstatement of his/her Louisiana teaching authorization after the lapse of time indicated in Subsection B of this Section and under the following conditions.

1. There have been no further convictions, submission of fraudulent documentation, or investigations regarding participation in cheating.

2. In criminal cases, there has been successful completion of all conditions/requirements of any parole and/or probation. The applicant must provide:

- a. relevant documentation; and
- b. a current state and FBI criminal history background check from state police that is clean and clear and evidence that there has been successful completion and relevant documentation of all conditions/requirements of any parole and probation.

#### **D. Applicant Responsibilities**

1. Contact the office of the Board of Elementary and Secondary Education and request a records review for reinstatement of the authorization.

2. Provide each applicable item identified in Subsection C of this Section, evidence that all requirements for teaching authorization have been successfully completed, and further documentation evidencing rehabilitation. The applicant is recommended to provide letters of support from past/present employers, school board employees and officials, faculty, and administrative staff from the college education department, law enforcement officials, or from other community leaders.

#### **E. State Board Responsibilities**

1. The board will consider the request for reinstatement and documentation provided. The board is not required to conduct a reinstatement records review and may summarily deny a request for issuance/reinstatement.

2. If the board or its designees decide to conduct a reinstatement records review, board staff shall notify the applicant of a date, time, and place when a committee of the board shall consider the applicant's request. Only the written documentation provided prior to the records review will be considered.

3. The board reserves the right to accept or reject any document as evidence of rehabilitation and the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible for reinstatement of a teaching authorization.

4. In accordance with R.S. 42:17, the board may meet in executive session for discussion of the character, professional competence, or physical or mental health of a person.

5. The board may deny any request for issuance by any applicant who:

- a. failed to disclose prior criminal convictions or expungements;
- b. falsified academic records;

- c. has been found to have participated in cheating in the administration of standardized tests; or
- d. received further criminal convictions or participated in cheating; or
- e. has had additional professional license/certificate censure.

6. The committee of the board shall make a recommendation to the full board regarding whether the teaching authorization issued to the applicant should be issued, reinstated, suspended for an additional period of time, or remain revoked. Board staff shall notify the applicant of the board action.

7. The action of the board is a final decision and can only be appealed to a court of proper jurisdiction in accordance with law.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 44:

Dr. Gary L. Jones  
President

1809#009

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Teaching Authorizations  
(LAC 28:CXXXI.311, 504, 903, 905, 906, and 911)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:CXXXI, *Bulletin 746—Louisiana Standards for State Certification of School Personnel*. These emergency revisions align current state policy with recently-enacted legislation from the 2018 Louisiana Legislature related to teaching authorizations of school personnel. This emergency action is necessary in order to provide for the implementation of newly-enacted legislation contained in R.S. 17:7(6) and 17:15, from the 2018 Regular Session of the Legislature. If this action is not taken, then the provisions contained in this legislation, which pertain to criminal background checks of teachers and the issuance of Louisiana teaching authorizations, will not be in effect in a timely manner for the 2018-2019 school year, putting the wellbeing of all students in the state of Louisiana in possible jeopardy. By taking emergency action, this will help to ensure a safe environment for all children attending school in Louisiana. This Declaration of Emergency, adopted on August 15, 2018, is in effect for a period of 120 days from adoption, or until adopted as a final Rule.

## Title 28

## EDUCATION

### Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

#### Chapter 3. Teaching Authorizations and Certifications

##### Subchapter A. Standard Teaching Authorizations

Editor's Note: The name of the Division of Student Standards and Assessments has been changed to The Division of Student Standards, Assessments, and Accountability.

##### §311. World Language Certificate (WLC) PK-12

A. - E. ...

F. A foreign language teacher in a certified foreign language immersion program who cannot be certified or issued an authorization to teach through the board's Foreign Associate Teacher Program may be allowed to teach without passing the required examination, provided the teacher has at least a baccalaureate degree and complies with state laws relative to background checks and review of criminal history.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 32:1800 (October 2006), amended LR 33:1618 (August 2007), LR 34:233 (February 2008), LR 35:642 (April 2009), LR 36:486 (March 2010), LR 38:1952 (August 2012), LR 40:280 (February 2014), LR 43:1307 (July 2017), LR 44:745 (April 2018), LR 44:

#### Chapter 9. Actions Related to the Suspension/Denial and Revocation of Louisiana Certificates

##### §903. Definitions

A. - B.1. ...

2. those of a jurisdiction other than Louisiana which, in the judgment of the bureau employee charged with responsibility for responding to the request, would constitute a crime under the provisions cited in this Subsection, and those under the federal criminal code having analogous elements of criminal and moral turpitude. (Federal criminal code provisions are in title 18 of U.S.C.A.) Specifically:

Crimes Reported under R.S. 15:587.1	
* * *	
*R.S. 14:81.4	Prohibited sexual conduct between educator and student
*R.S. 14:82	Prostitution
*R.S. 14:82.1	Prostitution; Persons under seventeen; Additional offenses
* * *	
R.S. 14:89.2	Crime against nature by solicitation
*R.S. 14:92	Contributing to the delinquency of juveniles
*R.S. 14:93	Cruelty to juveniles
* * *	
*Certificate issuance/reinstatement will never be considered for crimes marked with an asterisk.	

C. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1830 (October 2006), amended LR 34:2559 (December 2008), LR 38:763 (March 2012), LR 44:265 (February 2018), LR 44:

#### **§905. Denial of Initial or Renewal Certificates**

A. An application for a Louisiana teaching certificate or an application for the renewal of an expired Louisiana teaching certificate shall be denied if the department determines that the individual applying for the certificate has been convicted of any offense listed in R.S. 15:587.1(C) or any felony offense whatsoever or has submitted fraudulent documentation, or has participated in cheating. A person convicted of an offense as defined herein or has submitted fraudulent documentation, or has participated in cheating may apply for a certificate if the following conditions apply:

1. five years have elapsed from date of entry of final conviction, the date of entry of his plea of nolo contendere, or from the date of receipt of notification from the board of its determination that the person submitted fraudulent documentation or facilitated cheating on a state assessment;

2. the board has received a request from the person for a formal appeal and has conducted a review of the person's background and the person has provided letters of recommendation to the board.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1830 (October 2006), amended LR 44:266 (February 2018), LR 44:

#### **§906. Issuance of a Denied Certificate**

A. Issuance will never be considered for teachers who have been convicted of a felony for the following crimes:

1. R.S. 14:283, 14:30, 14:30.1, 14:31, 14:32.6, 14:32.7, 14:32.8, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.1.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:45, 14:46.2, 14:46.3, 14:46.4, 14:78, 14:78.1, 14:80, 14:80.1, 14:81, 14:81.1, 14:81.2, 14:81.3, 14:81.4, 14:82, 14:82.1, 14:84, 14:86, 14:89, 14:89.1, 14:92, 14:93, 14:93.3, 14:93.5, 14:106, 14:283, and 14:286.

B. - E.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:1999 (September 2010), amended LR 38:763 (March 2012), LR 44:266 (February 2018), LR 44:

#### **§911. Reinstatement of Suspended or Revoked Certificates**

A. Reinstatement will never be considered for teachers who have been convicted of a felony for the following crimes:

1. R.S. 14:283, 14:30, 14:30.1, 14:31, 14:32.6, 14:32.7, 14:32.8, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.1.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:45, 14:46.2, 14:46.3, 14:46.4, 14:78, 14:78.1, 14:80, 14:80.1, 14:81, 14:81.1, 14:81.2, 14:81.3, 14:81.4, 14:82, 14:82.1, 14:84, 14:86, 14:89, 14:89.1, 14:92, 14:93, 14:93.3, 14:93.5, 14:106, 14:283, and 14:286.

B. Reinstatements of certificates shall not be considered until at least five years have elapsed from the date of entry of final conviction, submission of fraudulent documentation, the date of investigation results regarding the participation in cheating, or professional license/certificate censure as noted

in §905.B of this Part which resulted in certification suspension and/or revocation.

C. - E.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), R.S. 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1831 (October 2006), amended LR 34:2560 (December 2008), LR 36:1999 (September 2010), LR 38:764 (March 2012), LR 44:268 (February 2018), LR 44:

Dr. Gary L. Jones  
President

1809#004

## **DECLARATION OF EMERGENCY**

### **Board of Elementary and Secondary Education**

Bulletin 1566—Pupil Progression Policies and Procedures—  
Regular Placement (LAC 28:XXXIX.503)

In accordance with the provisions of R.S. 17:6(A)(10) and the Administrative Procedure Act (APA), R.S. 49:953(B)(1) et seq., the Board of Elementary and Secondary Education has amended LAC 28:XXXIX.Chapter 5 in Bulletin 1566—*Pupil Progression Policies and Procedures*: §503. Regular Placement. The proposed policy revisions provide relative to student placement in first grade and regarding the transfer of students from out-of-state schools, non-public schools, and home study programs. These emergency revisions outline prerequisites to enrollment in first grade, and requirements for students transferring into public schools seeking to enroll in fifth and ninth grade. This emergency action is necessary in order to align transfer student placement requirements in a timely manner for out-of-state transfer students with current requirements for in-state transfer students. By aligning these two policies at the beginning of the 2018-2019 school year, as opposed to the time in which the corresponding Notice of Intent becomes a final Rule, this will provide for the wellbeing of all transfer students in Louisiana (both in-state and out-of-state), providing local education agencies (LEAs) with standards that are more consistent. This emergency action will guarantee that students are more accurately assessed and placed at the appropriate grade-level in a timely manner and based on individual student needs. This Declaration of Emergency, adopted on August 15, 2018, is effective for a period of 120 days from adoption, or until adopted as a final Rule.

### **Title 28**

### **EDUCATION**

### **Part XXXIX. Bulletin 1566—Pupil Progression Policies and Procedures**

### **Chapter 5. Placement Policies—General Requirements**

#### **§503. Regular Placement**

A. - A.1.e. ...

2. Every child, as a prerequisite to enrollment in any first grade of a public school, shall have attended at least a full-day public or non-public kindergarten for a full school year, or shall have satisfactorily passed an academic readiness screening administered by the school system prior to the time of enrollment for the first grade. Each school system shall establish the academic readiness level for its first grade based

on criteria established by the system. Any child not able to meet kindergarten attendance requirements due to illness or extraordinary, extenuating circumstances as determined by the school governing authority, shall be required to satisfactorily pass an academic readiness screening administered by the school system prior to the time of enrollment for the first grade. In accordance with R.S. 17:221, any child below the age of seven who legally enrolls in school shall be subject to state laws regarding compulsory attendance and promotion requirements set forth by the school system in accordance with this bulletin.

B. - D.2.a. ...

E. Transfer Students

1. The local school board shall establish written policies for the placement of students transferring from all other systems and home schooling programs (public, nonpublic, both in and out-of-state, and foreign countries).

a. Students in grades 5 and 9 transferring to a public school from any in-state nonpublic school (state-approved and not seeking state approval), any approved home study program, or Louisiana resident transferring from any out-of-state school, shall be administered the English language arts and mathematics portions of the LEAP placement test. Students who have scored below the "basic" achievement level shall have placement and individual academic supports addressed in the same manner as non-transfer students in accordance with §701 and §703.

b. Any child transferring into the first grade of a public school from out of state and not meeting the requirements for kindergarten attendance shall be required to pass an academic readiness screening administered by the school system prior to the time of enrollment for the first grade, in accordance with state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 2000), amended LR 26:1433 (July 2000), LR 26:1576 (August 2000), LR 27:188 (February 2001), LR 27:1006 (July 2001), LR 27:1682 (October 2001), LR 29:123 (February 2003), LR 30:407 (March 2004), LR 31:1974 (August 2005), LR 31:3103 (December 2005), LR 33:2063 (October 2007), LR 34:2389 (November 2008), LR 36:2003 (September 2010), LR 40:765 (April 2014), LR 40:1332 (July 2014), LR 40:2533 (December 2014), LR 41:1271 (July 2015), LR 44:480 (March 2018), LR 44:1003 (June 2018), LR 44:

Dr. Gary L. Jones  
President

1809#010

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **2018 Private Recreational Gray Triggerfish Season Closure**

Louisiana's private recreational gray triggerfish season was previously open from March 1, 2018 through April 30, 2018 and closed from June 1 through July 31, 2018 for a

seasonal closure. The season then re-opened on August 1, 2018. The regional administrator of NOAA Fisheries has informed the Secretary that the recreational season for gray triggerfish in the federal waters of the Gulf of Mexico will close on August 17, 2018. Data indicate that the 2018 recreational annual catch target of 217,100 pounds has been met and a closure is necessary to prevent overfishing.

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary by the Commission in LAC 76:VII.335.G.5 to modify opening and closing dates of any commercial or recreational reef fish seasons in Louisiana state waters when he is informed by the regional administrator of NOAA fisheries that the seasons have been closed in adjacent federal waters, the Secretary hereby declares:

The season for the recreational harvest of gray triggerfish in Louisiana state waters shall close at 11:59 p.m. on Thursday, August 16, 2018. Effective with this closure, no person shall recreationally harvest or possess gray triggerfish whether within or without Louisiana waters.

Jack Montoucet  
Secretary

1809#001

## **DECLARATION OF EMERGENCY**

### **Department of Wildlife and Fisheries Wildlife and Fisheries Commission**

#### **2018 Private Recreational Red Snapper Season Closure**

Louisiana's private recreational red snapper season was previously set by the Wildlife and Fisheries Commission at its regular meeting on May 3, 2018 to be open daily beginning on May 25, 2018. The daily season was further modified at a June 26, 2018 special meeting to be closed on July 8, 2018 and re-open for weekends only (Friday, Saturday, and Sunday) on the first weekend of every month beginning August 3, 2018. The season was modified again by the Commission at its regular meeting on July 3, 2018 to close on July 8, 2018 and re-open for weekends only (Friday, Saturday, and Sunday) on every weekend beginning on Friday, July 13, 2018 until further notice. LA Creel data indicate that harvest rates are such that the state recreational allocation may be met or is projected to be reached, and a closure is warranted.

In accordance with the emergency provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary by the Commission at its regular meeting on July 3, 2018, the Secretary hereby declares:

The season for the recreational harvest of red snapper in Federal and state waters off Louisiana shall close at 11:59 p.m. on Sunday, August 12, 2018.

Any closure shall prohibit the possession and/or landing of red snapper in state waters, except for federally permitted



charter boats or commercial Individual Fishing Quota holders operating under federal law during federally established seasons and rules for those vessels.

Jack Montoucet  
Secretary

1809#002

## **DECLARATION OF EMERGENCY**

### **Office of the Governor Boxing and Wrestling Commission**

Boxing and Wrestling Standards  
(LAC 46:XI.Chapter 5)

The Louisiana State Boxing and Wrestling Commission does hereby exercise the emergency provisions of the Administrative Procedure Act R.S. 49:953(B) in order to comply with House Bill 502 enacted during the 2018 Regular Session. This Emergency Rule is effective as of September 6, 2018 and will remain in effect for a period of 120 days.

#### **Title 46**

### **PROFESSIONAL AND OCCUPATIONAL STANDARDS**

#### **Part XI. Boxing and Wrestling**

#### **Chapter 5. Professional Wrestling**

#### **§529. Wrestling Promoters Class "B" Licensing**

A. There is hereby created a class "B" wrestling license to permit promoters to promote wrestling events where the venue is 400 or fewer persons in attendance.

B. There shall be no more than five class "B" wrestling licenses issued per calendar year;

C. Class "B" licenses will only be issued to persons in good standing with the commission, who have the requisite level of trustworthiness, knowledge and experience necessary to conduct class "B" events;

D. Once a promoter has obtained a class "B" wrestling license, he shall be limited to promoting only class "B" events.

E. Under no circumstances will the holder of a class "B" wrestling license be permitted to promote a show for any other person.

F. The cost for a class "B" wrestling promoter's license shall be \$250.

AUTHORITY NOTE: Promulgated in accordance with R.S.4:64, 4:65, and 4:83

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission LR 44:

#### **§531. Submission of Documents for Class "B" Licenses**

A. There shall be a Form 528(A); 528(B) 528(C) created by the commission and posted on the commission website for the submission of requests for class "B" shows.

B. Along with the completed Form 528(A) each promoter shall submit the following:

1. one of the following:

a. a document from the fire marshal indicating that the venue is 400 persons or less or;

b. Form 528(B) signed by an appropriate official from the primary or secondary school where the event is to be held;

2. one of the following:

a. an insurance policy indicating that the promoter has secured a commercial liability policy in the amount of \$100,000 which will be in effect for the event; or

b. Form 528(C) indicating that the venue provides a commercial liability policy in the amount of \$100,000 which will be in effect for the event;

3. current documentation evidencing that the individual is certified in infant/child/adult CPR;

4. for each wrestler listed as participating in the event, up to date medical testing results pursuant to medical requirements of the general rules of this title, and

5. for each wrestler who has never been licensed by the commission, either:

a. a copy of a wrestling license issued by another state or jurisdiction; or

b. Form 529(I) verifying the wrestler has been cleared to participate in the event as set forth under Section 529.

C. Form 528(A) along with all documents set forth above shall be submitted to the commission no less than 15 days prior to the event, there shall be no exceptions to this 15 day deadline;

D. At the time of the submission of Form 528(A) the promoter shall submit a check payable to the commission for the sum of \$50 to pay for expenses of the examination and verification of the documents and forms.

AUTHORITY NOTE: Promulgated in accordance with R.S.4:64, 4:65, and 4:83

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission LR 44:

#### **§533. Participants**

A. No person, who has not previously been licensed as a professional wrestler in the state of Louisiana, or other state or recognized jurisdiction, shall be entitled to participate in any event under this Chapter;

B. A person, who has not previously been licensed as a professional wrestling in the state of Louisiana, or other State or recognized jurisdiction, can obtain clearance to participate in an event under this Chapter by doing the following:

1. submitting Form 529(I) to arrange an examination by the commission, which will be set at a reasonable place and time to be arranged through the commission;

a. at the examination, the commission shall determine that the applicant has the physical ability, skill and training to participate in an event under R.S. 4:83(B);

b. if the applicant is successful, the commission shall complete Form 529(I) and issue a copy of same to the applicant;

c. if the applicant is unsuccessful, he may, within three months, apply for re-examination;

2. at the time of the submission of the 529(I) form to the commission, the applicant shall include a cashier's check or money order in the amount of \$50 to secure the attendance of the deputy commissioner at the examination;

3. in no event shall the applicant be entitled to participate in a show within 15 days of his successful examination.

C. The commission declares that the participation of any contestant not listed on Form 528(A) is a danger to the public health, welfare and safety pursuant to R.S. 49:961 requiring immediate action, and the commission may summarily suspend a promoter or wrestler's license pending a hearing, if such a violation has been committed.

AUTHORITY NOTE: Promulgated in accordance with R.S.4:64, 4:65, and 4:83

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission LR 44:

**§535. Promoter's Obligations**

A. The promoter is obligated to the commission, the public and the participants to insure all rules and regulations of the commission are followed, except those specifically excluded by R.S. 4:83(B). In addition, the promoter shall, within 15 days of his event, sent a report the commission which shall contain the following:

1.a. injuries suffered by any of the contestants, including but not limited to

- i. cuts requiring stitches
- ii. broken bones
- iii. injuries requiring emergency medical treatment or hospitalization;

b. it shall be the duty of the promoter to include the name of the injured contestant as well as all other relevant information concerning the person's treatment, etc.,

2. injuries suffered by any of the spectators;

3. number of persons attending the event;

4. a list of any violations of the rules and regulation set forth under this title, including the name of the perpetrator(s) and the specific violation(s) committed;

5. if a promoter fails to submit this report within 15 days after the event, no approval for a new event shall be granted except by application submitted directly to the commission at one of its regular monthly meetings, at which time the promoter shall also explain the reason for his failure to timely submit his report. Multiple failure to submit timely reports may lead to suspension.

6. the commission declares that the promoter's failure to operate his event in compliance with this title, and the rules and regulation of the commission, is a potential danger to the public health, welfare and safety pursuant to R.S. 49: 961 requiring immediate action, and the commission may summarily suspend a promoter license pending a hearing, if such a violation has been committed

AUTHORITY NOTE: Promulgated in accordance with R.S.4:64, 4:65, and 4:83

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission LR 44:

Anthony "Buddy" Embanato  
Chairman

1809#017

# Rules

## RULE

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

#### Horticulture and Quarantine Programs Emerald Ash Borer Quarantine (LAC 7:XV.167)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority set forth in R.S. 3:1652, the Department of Agriculture and Forestry ("department") has amended the Rule set forth below, expanding a previously established quarantine for the following pest: emerald ash borer ("EAB"), *Agilus planipennis* Fairmaire. The previous quarantine included the parishes of Bossier, Claiborne, Lincoln, Union, and Webster. This Rule expands the quarantine to include Bienville, Jackson, Morehouse, and Ouachita Parishes. This Rule is hereby adopted on the day of promulgation.

## Title 7

### AGRICULTURE AND ANIMALS

#### Part XV. Plant Protection and Quarantine

##### Chapter 1. Crop Pests and Diseases

##### Subchapter F. Emerald Ash Borer Quarantine

##### §167. Emerald Ash Borer Quarantine

A. ...

B. Quarantined areas in this state include:

1. the entire parishes of Bienville, Bossier, Claiborne, Jackson, Lincoln, Morehouse, Ouachita, Union and Webster.

B.2. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1652, 3:1653.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 41:2577 (December 2015), amended LR 43:245 (February 2017), LR 44:1589 (September 2018).

Mike Strain, DVM  
Commissioner

1809#024

## RULE

### Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

#### Horticulture and Quarantine Programs Roseau Cane Scale Quarantine (LAC 7:XV.169)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., and pursuant to the authority set forth in R.S. 3:1652, the Department of Agriculture and Forestry (department) has adopted the rule set forth below establishing a quarantine for the following pest: Roseau cane scale, *Nipponaclerda biwakoensis*. The following parishes are affected: Acadia, Allen, Ascension, Assumption, Beauregard, Calcasieu, Cameron, East Feliciana, East Baton Rouge, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines,

Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. Landry, St. John, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermillion, Vernon, Washington, West Baton Rouge, and West Feliciana. This Rule is hereby adopted on the day of promulgation.

## Title 7

### AGRICULTURE AND ANIMALS

#### Part XV. Plant Protection and Quarantine

##### Chapter 1. Crop Pests and Diseases

##### Subchapter G. Roseau Cane Scale Quarantine

##### §169. Roseau Cane Scale Quarantine

A. The department issues the following quarantine because the state entomologist has determined that the insect Roseau cane scale ("RCS"), *Nipponaclerda biwakoensis*, has been found in this state and may be prevented, controlled, or eradicated by quarantine.

B. Regulated articles, defined in this Section, are not allowed to move within or outside of the quarantine area.

C. The quarantine area encompasses all areas south of Louisiana Highway 10 beginning at the Mississippi state line (near Bogalusa) and moving west until intersecting Highway 171 in Vernon Parish; then, moving south on Highway 171 continuing to Highway 190 in DeRidder and turning west on Highway 190; continuing on Highway 190 until reaching the Sabine River. Quarantine areas in this state include:

1. portions of the following parishes that are south of Louisiana Highway 10:

- a. Allen;
- b. East Feliciana;
- c. Evangeline;
- d. Pointe Coupee;
- e. St. Landry;
- f. St. Helena;
- g. Tangipahoa;
- h. Vernon;
- i. Washington; and
- j. West Feliciana;

2. the entire parishes of:

- a. Acadia;
- b. Ascension;
- c. Assumption;
- d. Beauregard;
- e. Calcasieu;
- f. Cameron;
- g. East Baton Rouge;
- h. Iberia;
- i. Iberville;
- j. Jefferson;
- k. Jefferson Davis;
- l. Lafayette;
- m. Lafourche;
- n. Livingston;
- o. Orleans;
- p. Plaquemines;
- q. St. Bernard;
- r. St. Charles;
- s. St. James;

- t. St. John;
- u. St. Martin;
- v. St. Mary;
- w. St. Tammany;
- x. Terrebonne;
- y. Vermillion; and
- z. West Baton Rouge.

D. Clean nursery stock of the genus *Phragmites* may be moved within the quarantine area under a special permit issued by the Department of Agriculture and Forestry.

E. Limited movement of Roseau cane by boat only is allowed for waterfowl hunters as long as the Roseau cane material is moved no more than one-quarter mile from its original location and remains within the quarantine area.

F. The following articles are deemed to be regulated articles for purposes of this Subsection:

- 1. The Roseau cane scale in all of its life stages.
- 2. Roseau cane or any species or variety of the genus *Phragmites*.

3. Any other article, product, or means of conveyance not listed in this Subsection may be designated as a regulated article if an inspector determines that it presents a risk of spreading Roseau cane scale and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of the regulations.

G. Any person violating this quarantine shall be subject to imposition of the remedies and penalties set forth in R.S. 3:1653.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1652, 3:1653.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 44:1589 (September 2018).

Mike Strain, DVM  
Commissioner

1809#025

## RULE

### Department of Children and Family Services Division of Family Support Child Support Enforcement Section

#### Mandatory Fee for Successful Child Support Collection (LAC 67:III.2523)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Children and Family Services, Division of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Support Enforcement Services, Chapter 25, Subchapter E, Section 2523, Mandatory Fee for Successful Child Support Collection, which provides for modernization of child support enforcement fees.

Section 2523 has been amended as required by Section 53117 of the entitled Bipartisan Budget Act of 2018 (Public Law No. 115-123): Modernizing Child Support Enforcement Fees, by increasing the collections fee from \$25 when there

has been a collection of \$500, to \$35 on collections of \$550. This fee will continue to be assessed on all state IV-D cases that have not received assistance under the former AFDC program, the state TANF program, or the tribal TANF program. This Rule is hereby adopted on the day of promulgation, and is effective October 1, 2018.

## Title 67

## SOCIAL SERVICES

### Part III. Family Support

#### Subpart 4. Child Support Enforcement

#### Chapter 25. Support Enforcement

#### Subchapter E. Individuals Not Otherwise Eligible

#### §2523. Mandatory Fee for Successful Child Support Collection

A.1. Effective October 1, 2006, in the case of an individual who has never received assistance under a state program funded under Part A of the Social Security Act and for whom the state has collected at least \$500 of support, the state shall impose an annual fee of \$25 for each case in which services are furnished.

2. Effective October 1, 2006, the custodial party shall be responsible for the annual fee and the fee shall be retained by the state from support collected, (but not from the first \$500 collected) or paid by the state out of its own funds (the payment of which from state funds shall not be considered as an administrative cost of the state for the operation of the plan, and the fees shall be considered income to the program).

B.1. Effective October 1, 2018, in the case of an individual who has never received assistance under a state program funded under Part A of the Social Security Act and for whom the state has collected at least \$550 of support, the state shall impose an annual fee of \$35 for each case in which IV-D services are furnished.

2. Effective October 1, 2018, the custodial party shall be responsible for the annual fee and the fee shall be retained by the state from support collected, (but not from the first \$550 collected) or paid by the state out of its own funds (the payment from state funds shall not be considered administrative cost). The fees collected shall be considered income to the program.

C. The mandatory fee will accrue based on the federal fiscal year.

D. Fees imposed and not collected in one year will be collected in the following federal fiscal year or subsequent federal fiscal years.

AUTHORITY NOTE: Promulgated in accordance with section 454(6)(B)(ii) of the Social Security Act, AT-06-01, and DCL-06-28.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:508 (March 2007), amended by the Department of Children and Family Services, Division of Family Support, Child Support Enforcement Section, LR 44:1590 (September 2018), effective October 1, 2018.

Marketa Garner-Walters  
Secretary

1809#014

## RULE

### Department of Environmental Quality Office of the Secretary Legal Affairs and Criminal Investigations Division

#### Underground Storage Tank Regulations (LAC 33:XI.Chapters 1-13)(UT018)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Underground Storage Tank regulations, LAC 33:XI.101, 103, 301, 303, 305, 307, 403, 501, 503, 505, 507, 509, 511, 513, 515, 599, 601, 603, 605, 607, 609, 611, 701, 703, 705, 707, 709, 711, 713, 715, 801, 803, 901, 903, 905, 907, 1101, 1103, 1105, 1107, 1111, 1113, 1115, 1117, 1119, 1121, 1123, 1125, 1129, 1131, 1133, 1135, 1137, 1139, 1201, 1203, 1205, 1303, 1305, 1307, 1309, and 1313 (UT018).

This Rule will incorporate changes made to 40 CFR Parts 280 and 281 that were published in the Federal Register, Vol. 80, No. 135, pages 41566-41683. These federal revisions are titled Underground Storage Tank Regulations—Revisions to Existing Requirements and New Requirements for Secondary Containment and Operator Training; Final Rule.

The required changes to the existing rule will include: adding periodic operation and maintenance requirements for Underground Storage Tank (UST) systems; addressing UST systems that were previously deferred from certain regulations; adding new release prevention and detection technologies; updating codes of practice; and making editorial corrections and technical amendments.

October 2018, is the deadline for states to promulgate regulations that are similar to, but no less stringent than, the final federal UST regulations. After promulgation, Louisiana is required to reapply for state program approval from the EPA.

The federally required changes will protect human health and the environment by requiring UST system components to work more efficiently and also help detect releases quicker. In addition to the federally required changes, regulatory clarifications and editorial corrections are needed in order to clarify the intent and increase the enforceability of the Louisiana UST regulations. The basis and rationale for the Rule are to mirror the federal regulations and to clarify the intent and increase the enforceability of the Louisiana UST regulations. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule is hereby adopted on the day of promulgation.

#### Title 33

#### ENVIRONMENTAL QUALITY

#### Part XI. Underground Storage Tank

#### Chapter 1. Program Applicability and Definitions

##### §101. Applicability

A. General. The requirements of these regulations apply to *underground storage tank (UST) systems* as defined in LAC 33:XI.103, except as otherwise provided in Subsections B and C of this Section.

1. Previously Deferred UST Systems. Airport hydrant fuel distribution systems, UST systems with field-constructed

tanks, and UST systems that store fuel solely for use by emergency power generators shall meet the requirements of LAC 33:XI as follows:

a. airport hydrant fuel distribution systems and UST systems with field constructed tanks shall meet the requirements of LAC 33:XI.Chapter 8;

b. UST systems that store fuel solely for use by emergency power generators installed before August 9, 2009, shall meet the requirements of LAC 33:XI.701-705 on or before September 20, 2021;

c. UST systems that store fuel solely for use by emergency power generators installed on or after August 9, 2009, are subject to all requirements of LAC 33:XI, including the interstitial monitoring release detection requirements of LAC 33:XI.701-705.

B. Exclusions. The following UST systems are excluded from the requirements of these regulations. The owner or operator shall provide documentation upon request for any exclusion claimed.

1. - 4. ...

5. Any UST system that contains or has never contained more than a *de minimis* concentration, as determined by the department, of regulated substances is excluded from the requirements of these regulations.

6. ...

#### C. Partial Exclusions

1. The following categories of partially-excluded tanks are exempted from all of the requirements of LAC 33:XI except for LAC 33:XI.305 and LAC 33:XI.715:

a. wastewater treatment tank systems not covered under Paragraph B.2 of this Section;

b. any UST systems containing radioactive materials that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

c. any UST system that is part of an emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 CFR 50; and

d. aboveground tanks associated with:

i. airport hydrant fuel distribution systems regulated under LAC 33:XI.Chapter 8; and

ii. UST systems with field-constructed tanks regulated under LAC 33:XI.Chapter 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:1467 (August 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:1492 (August 2009), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1591 (September 2018),

##### §103. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless specifically defined otherwise in LAC 33:XI.1105 or 1303.

\* \* \*

*Airport Hydrant Distribution System* (also called *airport hydrant system*)—a UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

\*\*\*

*Cathodic Protection Tester*—a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such a person shall have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

*Change-in-Service*—the continued use of a UST system to store a nonregulated substance.

\*\*\*

*Containment Sump*—a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of the tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump).

*Corrosion Expert*—a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired through a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has provided evidence to the satisfaction of the administrative authority documenting certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

*De Minimis Concentration*—Repealed.

\*\*\*

*Dispenser*—equipment located aboveground that dispenses regulated substances from the UST system.

*Dispenser System*—the dispenser and equipment necessary to connect the dispenser to the UST system.

\*\*\*

*Field-Constructed Tank*—a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank that is primarily fabricated in the field is considered field-constructed. Tank-within-a-tank technology tanks are not considered field-constructed tanks.

\*\*\*

*Install or Installation*—the process of placing a UST system in the ground and preparing it to be put into service. Adding new piping where none existed before at an existing site is considered a renovation and is regulated as an installation.

\*\*\*

*Motor Fuels*—all grades of gasoline including but not limited to gasohol, number 1 diesel, number 2 diesel, kerosene, and all aviation fuels. This term shall include new and used motor oil that is used for lubricating engines of motor vehicles. Motor fuels may include, as determined by the secretary, any product, petroleum or petroleum blend, biofuel or any new fuel that may emerge for the propulsion of motor vehicles. However, liquid petroleum (LP) gas, compressed natural gas (CNG), and liquefied natural gas (LNG) shall not be included in this definition of motor fuels.

\*\*\*

*Operator*—any person in control of, or having responsibility for, the daily operation of the UST system regardless if the UST system is active or temporarily closed.

\*\*\*

*Permanent Closure*—the process of removing and disposing of a UST system no longer in service, including the process of abandoning such a system in place through the use of prescribed techniques for the purging of vapors and the filling of the vessel with a solid, inert material, the process of properly labeling a tank, and the process of collecting subsurface samples.

\*\*\*

*Registered Tank*—a UST system for which an owner/operator has filed the required UST registration forms (UST-REG-01 and 02) with the department. After September 20, 2018, a UST system for which the owner/operator has filed the required registration form (UST-REG) with the department.

*Registration Certificate*—an annual certificate provided to the UST system owner by the department after all current annual fees, all unpaid annual fees, and any late payment fees for the UST system are paid. The current registration certificate also serves as documentation of financial assurance for UST owners that elect the Louisiana motor fuels underground storage tank trust fund as their mechanism for meeting the UST financial assurance requirements of LAC 33:XI.1107.

*Regulated Substance*—

a. any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under the department's hazardous waste regulations);

b. petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term *regulated substance* includes, but is not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils; and

c. any motor fuels as determined by the secretary.

\*\*\*

*Release Detection*—determining whether a release of a regulated substance has occurred from a UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

*Renovation*—to make nonrepair changes to a UST system, such as replacing existing piping with new piping, installing new piping and additional dispensers at an existing site, and installing new containment sumps at an existing site. *Renovations* are regulated as installations.

*Repair*—to restore to proper operating conditions a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment, or other UST system component that has caused or threatens to cause a release of product from the UST system or has failed to function properly.

*Replace or Replacement*—to remove an existing UST and install a new UST in substantially the same location as the removed tank, or to remove and replace 25 percent or more of underground piping associated with a single UST.

\* \* \*

*Secondary Containment*—a containment system that utilizes an outer or secondary container or impervious liner designed to prevent releases of regulated substances from the primary container from reaching the surrounding environment for a time sufficient to allow for detection and control of the released product. Such systems include, but are not limited to, double-wall tanks and piping, jacketed tanks and piping that have an interstitial space that allows for interstitial monitoring, containment sumps when used for interstitial monitoring of piping, and any other such system approved by the department prior to installation.

\* \* \*

*Temporary Closure*—the temporary removal from service of a UST (i.e., ceased dispensing product from a UST system). A compartment tank is not considered to be in temporary closure as long as any compartment of the tank is currently active.

*Under-Dispenser Containment*—a containment system beneath a dispenser designed to prevent releases of regulated substances from the dispenser or contained piping from reaching the surrounding environment for a time sufficient to allow for detection and control of the released product. Such containment shall be liquid-tight on its sides, bottom, and at any penetrations, and shall allow for visual inspection and access to the components in the containment system or be regularly monitored.

\* \* \*

*Underground Storage Tank or UST*—any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. Underground storage tank or UST does not refer to any of the tanks listed in Subparagraphs a-j of this definition, nor does it refer to any pipes connected to any of these tanks:

a. - c. ...

d. pipeline facilities (including gathering lines) which are regulated under 49 U.S.C. chapter 601;

e. intrastate pipeline facilities regulated under state laws as provided in 49 U.S.C chapter 601, and which are determined by the secretary of transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

f. - j. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 27:520 (April 2001), amended by the Office of Environmental Assessment, LR 31:1065 (May 2005), LR 31:1577 (July 2005), repromulgated LR 31:2002 (August 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:2115 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1591 (September 2018).

### **Chapter 3. Registration Requirements, Standards, and Fee Schedule**

#### **§301. Registration Requirements**

A. - A.2. ...

3. All existing UST systems previously registered with the department shall be considered to be in compliance with this requirement if the information on file with the department is current and accurate. Maintaining current and accurate information with the department includes notifying the Office of Environmental Assessment of changes in ownership, or of changes in UST system descriptions resulting from upgrading, by filing an amended registration form within 30 days of the change in ownership or in description of the UST system. After September 20, 2018, existing UST systems shall comply with the registration requirements outlined in LAC 33:XI.301.C.

B. New UST Systems. Beginning July 20, 1990, through September 20, 2018, all owners of new *UST systems* (as defined in LAC 33:XI.103) shall, at least 30 days before bringing such tanks into use, register them on an underground storage tank registration form (UST-REG-01). Registration forms shall be filed with the Office of Management and Finance. The following registration requirements apply to new UST systems.

1. All owners of new UST systems shall certify, in the space provided on the department's approved registration form, compliance with the following requirements:

a. - d. ...

2. All owners of new UST systems shall ensure that the installer certifies on the registration form that the methods used to install the tanks and piping comply with the requirements of LAC 33:XI.303.D.6.a. Beginning January 20, 1992, registration forms shall include the name and department-issued certificate number of the individual exercising supervisory control over *installation-critical junctures* (as defined in LAC 33:XI.1303) of a UST system.

C. All UST system owners or operators shall comply with the following requirements.

1. All owners of *UST systems* (as defined in LAC 33:XI.103) installed after September 20, 2018, shall register them using the underground storage tank registration and technical requirements form (UST-REG) prior to placing a regulated substance into the UST. To demonstrate compliance with the requirements outlined in LAC 33:XI.301.B.1, all owners shall certify in the space provided on the UST-REG form and submit the form to the Office of Management and Finance prior to allowing a regulated substance to be placed into the UST system. The form shall

be complete and accurate and filled out in its entirety. In addition to the requirements outlined in LAC 33:XI.301.B.1, the following requirements shall also be met.

a. The UST-REG form shall include the name and department-issued certificate number of the individual(s) exercising supervisory control over all *installation-critical junctures* (as defined in LAC 33:XI.1303) of the UST system.

b. If multiple certified installers exercised supervisory control of installation-critical junctures of an installation, a written statement signed by each installer explaining which certified worker was responsible for which installation-critical juncture shall accompany the UST-REG form.

c. A to-scale site diagram showing all tanks, product piping, vent piping, and dispenser locations of all UST systems installed or renovated after September 20, 2018, shall be submitted to the department with the UST-REG form.

2. All UST owners and operators shall submit a current and accurate updated UST-REG form to the department within 30 days of any changes of any of the items reflected on their most current registration forms. Owners who own multiple places of operation shall submit a separate form for each place of operation. Updated forms submitted to the department shall be filled out in their entirety with the exception of the certified worker section if the update does not involve a certified worker requirement.

3. All UST owners and operators shall submit an updated UST-REG form to the department within 60 days of the first compliance evaluation inspection after September 20, 2018, or before September 20, 2021, whichever comes first. The updated form shall be complete and accurate, and filled out in its entirety with the exception of the certified worker section if the update does not involve a certified worker requirement.

4. Any person who sells a UST system shall so notify the Office of Environmental Assessment in writing within 30 days after the date of the transaction. A person selling a UST shall also notify the person acquiring a regulated UST system of the owner's registration obligations under this Section.

5. Any person who acquires a UST system shall submit to the Office of Management and Finance an amended underground storage tank registration and technical requirements form (UST-REG) within 30 days after the date of acquisition.

6. Any person who acquires a UST system shall submit to the Office of Management and Finance all current and unpaid annual fees along with any late payment fees for the UST system prior to receiving a current registration certificate from the department.

7. A current copy of the registration form shall be kept on-site or at the nearest staffed facility.

8. A current copy of the registration certificate shall be kept on-site or at the nearest staffed facility.

9. No owner or operator shall allow a regulated substance to be placed into a UST system that has not been registered with the department.

10. No person shall place a regulated substance into a UST system that has not been registered with the department.

11. No owner or operator shall allow a regulated substance to be placed into a UST system that does not have a current registration certificate.

12. No person shall place a regulated substance into a UST system that does not have a current registration certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), LR 20:294 (March 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), repromulgated LR 32:393 (March 2006), amended LR 32:1852 (October 2006), LR 33:2171 (October 2007), LR 34:2116 (October 2008), amended by the Office of the Secretary, Legal Division, LR 38:2760 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2143 (November 2017), LR 44:1593 (September 2018).

### §303. Standards for UST Systems

A. ...

B. New UST Systems Near Active or Abandoned Water Wells. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all UST systems installed between December 22, 1988, and December 20, 2008, within 50 feet of an active or abandoned water well shall meet the requirements of LAC 33:XI.703.C.

C. Standards for UST Systems Installed after December 20, 2008. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all UST systems installed after December 20, 2008, shall have secondary containment in accordance with Subsection D of this Section and use interstitial monitoring for tanks and piping in accordance with LAC 33:XI.701.A.6 and 701.B.4.

1. ...

2. The department may grant an extension to these dates only in the event that the UST or UST system installation is delayed due to adverse weather conditions or other unforeseen, unavoidable circumstances. A written contract alone does not qualify as an unforeseen, unavoidable circumstance. In order to obtain an extension, the UST owner shall submit a written request to the Office of Environmental Assessment, describing the circumstances that have caused the installation delay.

D. All new UST systems shall comply with the following standards.

1. Tanks. Each tank shall be properly designed and constructed, and any portion underground that routinely contains product shall be protected from corrosion in accordance with Subsection A of this Section and as described below:

a. - b.iv. ...

c. the tank is constructed of steel and clad or jacketed with a noncorrodible material; or

d. the tank is constructed of metal without additional corrosion protection measures, provided that:

d.i. - f.i. ...

ii. it is some other secondarily-contained tank system approved by the department in writing prior to installation.



2. Piping. Piping on new UST systems that routinely contains regulated substances and is in contact with the soil, backfill, or water shall be properly designed, constructed, and protected from corrosion in accordance with Subsection A of this Section and as described below:

a. the piping is constructed of a noncorrodible material; or

b. - f.i. ...

ii. the piping system shall have some other form of secondary containment system approved by the department in writing prior to installation; and

g. if 25 percent or more of the piping to any one UST is replaced after December 20, 2008, the entire piping run shall comply with Clause D.2.f.i or ii of this Section;

h. if a new dispenser is installed at an existing UST facility and new piping is added to the UST system to connect the new dispenser to the existing system after December 20, 2008, then the new piping shall comply with Clause D.2.f.i or ii of this Section;

i. suction piping that meets the requirements of LAC 33:XI.703.B.2.a.ii.(a)–(e) and suction piping that manifolds two or more tanks together are not required to meet the secondary containment requirements of LAC 33:XI.303.D.2.f; and

j. reuse of existing single-walled piping is prohibited when replacement underground storage tanks are installed.

### 3. Spill and Overfill Prevention Equipment

a. Except as provided in Subparagraphs b and c of this Paragraph, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators shall use:

i. spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket). Spill buckets shall have liquid-tight sides and bottoms and be maintained free of liquid and debris; and

ii. - ii.(b). ...

(c). restrict flow 30 minutes prior to overfilling, or alert the transfer operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings on top of the tank are exposed to product because of overfilling.

b. - b.ii. ...

c. Flow restrictors used in vent lines shall not be used to comply with LAC 33:XI.303.D.3.a.ii when overfill prevention is installed or replaced after September 20, 2018. If removal is required, the entire ball float assembly shall be removed from the tank.

d. Spill and overfill prevention equipment shall be periodically tested or inspected in accordance with LAC 33:XI.511.

4. Under-Dispenser Secondary Containment. After December 20, 2008, under-dispenser containment:

a. is required under the following conditions:

i. in any installation of a new dispenser at a new facility;

ii. in any installation of a new or replacement dispenser at an existing facility where new piping is added to the UST system to connect the new dispenser to the existing system;

iii. ...

b. shall be liquid-tight on its sides, bottom, and at any penetrations, and be maintained free of storm water and debris. Regulated substances spilled into any under-dispenser containment sump shall be immediately removed upon discovery to the maximum extent practicable.

5. - 5.a.iii. ...

b. can consist of either a built-in secondary containment system or a STP containment sump. STP containment installed after December 20, 2008, shall be liquid-tight on its sides, bottom, and at any penetrations, and be maintained free of storm water and debris. Regulated substances spilled into any STP containment sump shall be immediately removed upon discovery to the maximum extent practicable.

### 6. Installation Procedures

a. Installation. The UST system, spill and overfill prevention devices, product pumping equipment, and emergency shutoff valves (e.g., shear or impact valves), shall be installed in accordance with Subsection A of this Section and in accordance with the manufacturer's instructions.

b. Certification of Installation and Verification of Installer Certification

i. From July 20, 1990, through January 20, 1992, UST owners shall have certified installations as follows. All UST owners shall have ensured that one or more of the following methods of certification, testing, or inspection was used to demonstrate compliance with Subparagraph D.6.a of this Section by providing a certification of compliance on the UST registration form (UST-REG-02) in accordance with LAC 33:XI.301:

(a). the installer was certified by the tank and piping manufacturers; or

(b). the installation was inspected and certified by a professional engineer with education and experience in UST system installation; or

(c). the installation was inspected and approved by the department; or

(d). all work listed in the manufacturer's installation checklists was completed; or

(e). the UST owner complied with another method for ensuring compliance with Subparagraph a of this Paragraph that was determined by the department to be no less protective of human health and the environment.

ii. Beginning January 20, 1992 through September 20, 2018, all UST owners shall have ensured that the individual exercising supervisory control over *installation critical-junctures* (as defined in LAC 33:XI.1303) of a UST system is certified in accordance with LAC 33:XI.Chapter 13. To demonstrate compliance with Subparagraph D.6.a of this Section, all UST owners shall have provided a certification of compliance on the UST registration of technical requirements form (UST-REG-02) within 60 days of the introduction of any regulated substance. Forms shall have been filed with the department.

iii. After September 20, 2018, all UST owners shall ensure that the individual exercising supervisory

control over *installation-critical junctures* (as defined in LAC 33:XI.1303) of a UST system is certified in accordance with LAC 33:XI.Chapter 13. To demonstrate compliance with Subparagraph a of this Paragraph, all UST owners shall provide a certification of compliance on the UST-REG form prior to introduction of any regulated substance into the UST system. Forms shall be submitted to the Office of Management and Finance.

c. Notification of Installation. The UST owner shall notify the Office of Environmental Assessment in writing at least 30 days before beginning installation of a UST system by:

- i. submitting a completed installation, renovation, repair, and upgrade notification form (UST-ENF-04);
- ii. including in the notification a statement of the number of active or abandoned water wells within 50 feet of the UST system and the type of system to be installed; and
- iii. including in the notification the methods to be used to comply with LAC 33:XI.Chapters 3 and 7.

d. The UST owner and/or certified worker responsible for the installation-critical junctures shall notify the appropriate regional office of the Office of Environmental Assessment by phone, mail, email, fax, or online (when available) seven days prior to commencing the installation and before commencing any *installation-critical juncture* (as defined in LAC 33:XI.1303).

E. Upgrading Existing UST Systems to New System Standards

1. All existing UST systems shall comply with one of the following sets of requirements:

- a. new UST system performance standards under Subsection D of this Section; or
- b. the upgrading requirements in Paragraphs 3-7 of this Subsection.

2. All existing UST systems not meeting the requirements of Paragraph E.1 of this Section shall comply with closure requirements under LAC 33:XI.Chapter 9, including applicable requirements for corrective action under LAC 33:XI.715. This does not apply to previously deferred UST systems described in LAC 33:XI.Chapter 8 and where an upgrade is determined to be appropriate by the department.

3. Tank Upgrading Requirements. Metal tanks shall be upgraded in accordance with Subsection A of this Section and meet one of the following requirements.

a. Internal Lining. A tank upgraded by internal lining shall meet the following:

- i. the lining was installed in accordance with the requirements of LAC 33:XI.507; and
- ii. within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications. If the internal lining is no longer performing in accordance with the original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally recognized organization or independent testing laboratory, then the lined tank shall be permanently closed in accordance with LAC 33:XI.Chapter 9.

iii. After September 20, 2018, an internally lined tank cannot be upgraded with an impressed current system.

b. Cathodic Protection. Tanks upgraded by cathodic protection shall meet the requirements of Clauses D.1.b.ii, iii,

and iv of this Section, and the integrity of the tank shall have been ensured using one of the following methods.

i. The tank was internally inspected and assessed to ensure that the tank was structurally sound and free of corrosion holes before the cathodic protection system is installed.

ii. The tank had been installed for less than 10 years and was monitored monthly for releases in accordance with LAC 33:XI.701.A.4-8.

iii. The tank had been installed for less than 10 years and was assessed for corrosion holes by conducting two tightness tests that meet the requirements of LAC 33:XI.701.A.3. The first tightness test shall have been conducted before the cathodic protection system was installed. The second tightness test shall have been conducted between three and six months after the first operation of the cathodic protection system.

iv. The tank was assessed for corrosion holes by a method that was determined by the department to prevent releases in a manner that was no less protective of human health and the environment than the methods specified in Clauses E.3.b.i-iii of this Section.

v. All procedures used to upgrade existing UST systems by cathodic protection shall have been conducted in accordance with applicable requirements of the Louisiana Department of Transportation and Development, or its successor agency.

vi. After September 20, 2018, a tank tightness test, performed in accordance with LAC 33:XI.701.A.3, shall be conducted at least once every 12 months for the life of the tank on all tanks that were over 10 years old when the cathodic protection system was installed, unless the current owner has documentation to prove that a tank integrity assessment was conducted prior to the installation of the cathodic protection system (regardless of who owned the tank at the time), or unless an internal lining was installed at the same time as the cathodic protection system.

c. Internal Lining Combined with Cathodic Protection. Tanks upgraded by both internal lining and cathodic protection installed at the same time shall meet the following:

- i. the lining was installed in accordance with the requirements of LAC 33:XI.507; and
- ii. the cathodic protection system meets the requirements of Clauses D.1.b.ii, iii, and iv of this Section.

4. Piping Upgrading Requirements. Metal piping that routinely contains regulated substances and is in contact with the soil, backfill, or water shall be cathodically protected and shall meet the requirements of Clauses D.2.b.ii, iii, and iv of this Section.

5. Spill and Overfill Prevention Equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems shall comply with the requirements for spill and overfill prevention equipment for new UST systems specified in Paragraph D.3 of this Section.

6. Emergency Shutoff Valves (Shear or Impact). Emergency shutoff valves at existing facilities must be installed in accordance with Subsection A of this Section and in accordance with the manufacturer's instructions.

7. Reporting Requirements

a. The owner and operator shall notify the Office of Environmental Assessment in writing at least 30 days before

beginning a UST system upgrade by submitting a completed UST-ENF-04 form.

b. The UST owner and/or certified worker responsible for the upgrade shall notify the appropriate regional office of the Office of Environmental Assessment by phone, mail, email, fax, or online (when available) seven days prior to commencing any *installation-critical junctures* and *repair-critical junctures* (as defined in LAC 33:XI.1303).

c. An amended registration form (UST-REG-02) shall have been submitted to the Office of Environmental Assessment within 30 days after the UST system was upgraded. The owner and operator must have certified compliance with Subsection C of this Section on the amended registration form (UST-REG-02). Beginning January 20, 1992, the amended registration forms (UST-REG-01 and 02) shall include the name and department-issued certificate number of the individual exercising supervisory control over those steps in the upgrade that involve *installation-critical junctures* or *repair-critical junctures* (as defined in LAC 33:XI.1303) of a UST system. After September 20, 2018, the UST-REG form must be used to comply with this Subsection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), amended by the Office of Environmental Assessment, LR 31:1066 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2171 (October 2007), LR 34:2116 (October 2008), LR 35:1493 (August 2009), amended by the Office of the Secretary, Legal Division, LR 38:2761 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2143 (November 2017), LR 44:1594 (September 2018).

### **§305. Installation Requirements for Partially-Deferred UST Systems**

A. The requirements in this Section apply to UST systems partially excluded under LAC 33:XI.101.C.1.a, b, and c.

B. Owners and operators shall install a UST system listed in LAC 33:XI.101.C.1.a, b, or c for the purpose of storing regulated substances (whether of single or double-wall construction) that meets the following requirements.

1. - 3. ...

C. Notwithstanding Subsection B of this Section, a UST system without corrosion protection may be installed at a site that a corrosion expert determines is not corrosive enough to cause the UST system to have a release due to corrosion during its operating life. Owners and operators shall maintain records that demonstrate compliance with the requirements of this Subsection for the remaining life of the tank.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1069 (May 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1597 (September 2018).

### **§307. Fee Schedule**

A. - B.1. ...

2. Any UST system shall be assessed the entire annual fee for the fiscal year in which it is installed or permanently closed, regardless of the date during that year on which such action occurs.

3. The owner of the UST system is responsible for payment of the annual fee, any late payment fees, and all outstanding fees and late payment fees.

4. Fees are assessed according to the following schedule.

Fee Number	Annual Fees	Amount
	Annual Registration Fee	
	All registered UST systems	\$60
2	Annual Maintenance and Monitoring Fees	
a	UST systems at federal facilities (all categories except USTs defined in Fee Number 2.b., which shall be assessed the higher fee)	\$174
b	UST systems containing any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under the department's Hazardous Waste Regulations, LAC 33:V.Subpart 1)	\$726
c	UST systems containing petroleum products not meeting the definition of motor fuels	\$174
3	Motor Fuels Underground Storage Tank Trust Fund Fee	
	UST systems containing new or used motor oil (except USTs identified in LAC 33:XI.1101.C and D)	\$303

C. Amended Registration Fees. The fee for amending or modifying a registration for change of ownership shall be \$60.

D. - E.3.c. ...

F. Failure to Pay. Failure to pay the prescribed fees as provided herein, within 90 days after the due date, shall constitute a violation of these regulations and shall subject the person to applicable enforcement actions under the act including, but not limited to, revocation or suspension of the applicable permit, license, registration, or variance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001, 2014, 2195, and 2195.3 et seq., and R.S. 49:316.1(A)(2)(a) and (c).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:19 (January 1996), LR 25:427 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2400

(December 1999), LR 29:690 (May 2003), LR 29:2052 (October 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 35:2181 (October 2009), amended by the Office of the Secretary, Legal Division, LR 43:950 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1597 (September 2018).

#### **Chapter 4. Delivery Prohibition**

##### **§403. Delivery Prohibition of Regulated Substances to Underground Storage Tank Systems**

A. Underground storage tank (UST) systems, except for those systems deferred or exempted from specified Chapters and Sections of these regulations in accordance with LAC 33:XI.101.B and C, shall be subject to the status of red tag/delivery prohibition of regulated substances upon discovery by the department of any of the following conditions:

1. failure to install spill prevention equipment in accordance with LAC 33:XI.Chapter 3;
2. failure to install overfill protection equipment in accordance with LAC 33:XI.Chapter 3;
3. failure to conduct release detection in accordance with LAC 33:XI. 703.A.1;
4. failure to install corrosion protection equipment for tanks and product piping in accordance with LAC 33:XI.Chapter 3;
5. allowing a regulated substance to be placed into an unregistered UST in accordance with LAC 33:XI.301.C.9 or 10;
6. allowing a regulated substance to be placed into a UST that does not have a current registration certificate in accordance with LAC 33:XI.301.C.11 or 12;
7. upon evidence of a below-surface release from an UST system, failure to conduct a system test within the time frame established in LAC 33:XI.711.A.1, failure to take initial response actions required by LAC 33:XI.715.B.2 and 3, or failure to conduct the initial abatement measures required by LAC 33:XI.715.C.1.a-d and g; or
8. whenever failed tank or failed piping has not been repaired, replaced, upgraded, or permanently closed, or temporarily closed in accordance with LAC 33:XI.711.A.1.

##### **B. - B.1. ...**

2. failure to properly operate and/or maintain spill and overfill equipment in accordance with LAC 33:XI.Chapter 3 and 503.D, or corrosion protection equipment in accordance with LAC 33:XI.Chapters 3 and 5. Failure to provide records, within 10 days of request by the department, showing the type of spill, overfill, or corrosion protection equipment installed and the proper operation and/or maintenance of spill, overfill, or corrosion protection equipment shall be considered a failure to properly operate and/or maintain the spill, overfill, or corrosion protection equipment;

3. failure to maintain financial responsibility in accordance with LAC 33:XI.Chapter 11;

4. failure to protect from corrosion buried metal flex hoses and/or components that routinely contain regulated substances in accordance with LAC 33:XI.303.D.2 and E.4. Failure to produce records, within 10 days of request by the department, showing procedures and/or practices designed to protect from corrosion buried metal product piping, flex

hoses, and/or components that routinely contain regulated substances shall be considered a failure to protect from corrosion buried metal product piping, flex hoses, and/or components that routinely contain regulated substances;

5. failure to conduct periodic testing of spill prevention equipment and containment sumps used for interstitial monitoring of piping and failure to conduct periodic inspection of overfill equipment in accordance with LAC 33:XI.511, and failure to repair or replace failed equipment in accordance with LAC 33:XI.511.D.2 and 3. Failure to provide records, within 10 days of request by the department, showing proper testing and/or inspection of spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill equipment shall be considered failure to properly conduct periodic testing and/or inspecting the equipment;

6. failure to conduct periodic operation and maintenance walkthrough inspections in accordance with LAC 33:XI.513, and failure to repair or replace failed equipment in accordance with LAC 33:XI.513.C.2 and 3. Failure to provide records, within 10 days of request by the department, showing that the periodic operation and maintenance walkthrough inspections were conducted in accordance with LAC 33:XI.513 shall be considered failure to conduct periodic operation and maintenance walkthrough inspections;

7. storing a regulated substance containing greater than 10 percent ethanol or greater than 20 percent biodiesel without demonstrating UST system compatibility in accordance with LAC 33:XI.505.C; or

8. upon evidence of a release or a suspected release from a UST system, except for the notification requirements of LAC 33:XI.713 and 715, failure to initiate by the UST owner the release investigation and confirmation steps in accordance with LAC 33:XI.711, cleanup of spills and overfills as required by LAC 33:XI.713, or compliance with the release response and corrective action requirements of LAC 33:XI.715.

##### **C. - D. ...**

E. The owner/operator of an UST that has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance shall make the necessary system repairs or upgrades, or remedy any form of noncompliance, and shall be cleared of the red tag/delivery prohibition in writing by the department, or a person authorized by the department, in order to be removed from the red tag listing and be deemed eligible for delivery of regulated substances. The department, or a person authorized by the department, shall remove the red tag/delivery prohibition status for an UST system within two working days after compliance and/or upgrade or repair has been demonstrated.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 33:1867 (September 2007), amended LR 34:2119 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1598 (September 2018).

## **Chapter 5. General Operating Requirements**

### **§501. Spill and Overfill Control**

A. ...

B. Owners and operators shall ensure that releases due to spilling or overfilling do not occur. Before a transfer is made, the owner and operator shall ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank and that the transfer operation is monitored constantly to prevent overfilling and spilling. Spill and overfill controls shall be conducted in accordance with Subsection A of this Section.

C. Owners and operators shall report, investigate, and clean up any spills and overfills, in accordance with LAC 33:XI.713.

D. Overfill prevention devices must be inspected by removal in accordance with LAC 33:XI.511.A.3 and 511.A.1.b.ii within seven days of any tank overfill event.

E. Tank overfills (when tank is more than 90 or 95 percent full depending on the type of overfill equipment installed) must not occur as a result of tank or piping manifolds. Manifoldded UST systems that cause overfills must be immediately taken out of service and repaired, replaced, permanently closed, or placed in temporary closure following the procedures outlined in LAC 33:XI.711.A.1.b.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1069 (May 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1598 (September 2018).

### **§503. Operation and Maintenance of Corrosion Protection**

A. All owners and operators of metal UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented until the UST system is permanently closed or undergoes a change-in-service in accordance with LAC 33:XI.905.

1. All corrosion protection systems shall be operated and maintained to continuously provide corrosion protection to the metal components of external portions of the tank and piping that routinely contain regulated substances and are in contact with the soil, backfill, or water.

2. All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements.

a. Frequency. All cathodic protection systems shall be tested within six months after installation and at least once every 36 months thereafter, or according to another timeframe established by the department.

b. Inspection Criteria. The criteria used to determine whether cathodic protection is adequate as required by this Section shall be in accordance with the guidelines established by the department and any applicable industry code or recommended practice listed in LAC 33:XI.501.A.

3. UST systems with impressed current cathodic protection systems shall also be inspected every 60 days to ensure that the equipment is running properly.

B. For UST systems using cathodic protection, records of the operation of the cathodic protection shall be maintained (in accordance with LAC 33:XI.509) to demonstrate compliance with the performance standards in this Section. These records shall provide the following:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1069 (May 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1599 (September 2018).

### **§505. Compatibility**

A. Owners and operators shall use a UST system made of or lined with materials that are compatible with the substance stored in the UST system.

B. ...

C. Owners and operators shall notify the department using the UST-REG form within 30 days of September 20, 2018, if currently storing or at least 30 days prior to switching to a regulated substance containing greater than 10 percent ethanol, greater than 20 percent biodiesel, or any other regulated substance identified by the department. In addition, owners and operators of UST systems storing these regulated substances shall meet one of the following:

1. demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill prevention equipment, and overfill prevention equipment). Owners and operators may demonstrate compatibility of the UST system by using one of the following options:

a. certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance; or

b. equipment or component manufacturer approval. The manufacturer's approval shall be in writing, indicating an affirmative statement of compatibility, specifying the range of biofuel blends the equipment or component is compatible with, and be from the equipment component manufacturer; or

2. use another option determined by the department to be no less protective of human health and the environment than the options listed in Paragraph 1 of this Subsection.

D. Owners and operators shall maintain records in accordance with LAC 33:XI.509.B documenting compliance with Paragraph C of this Section for as long as the UST system is used to store the regulated substance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1599 (September 2018).

### **§507. Repairs Allowed**

A. Owners and operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs shall meet the following requirements.

1. The UST owner and operator shall notify the Office of Environmental Assessment as specified below:

a. submit a completed installation, renovation, repair, and upgrade notification form (UST-ENF-04) 30 days prior to conducting a repair to a UST system;

b. if the repair is an emergency repair, the UST owner or operator shall submit a completed UST-ENF-04 form within 30 days after completion of the repair detailing the nature of the repair;

c. the UST owner shall submit an amended UST-REG form within 30 days after completion of the repair if any changes of any of the items reflected on the previously submitted forms has changed due to the repair;

d. the UST owner, operator, and/or certified worker responsible for the repairs shall notify the appropriate regional office of the Office of Environmental Assessment by phone, mail, email, fax, or online (when available) seven days prior to commencing any *repair-critical junctures* (as defined in LAC 33:XI.1303).

2. Repairs to UST systems shall be properly conducted in accordance with LAC 33:XI.501.A. Beginning January 20, 1992, all owners and operators shall ensure that the individual exercising supervisory control over *repair-critical junctures* (as defined in LAC 33:XI.1303) is certified in accordance with LAC 33:XI.Chapter 13.

3. Repairs to fiberglass-reinforced plastic tanks shall be made either by the manufacturer's authorized representatives or in accordance with LAC 33:XI.501.A.

4. Metal pipe sections and fittings that have released product as a result of corrosion or other damage shall be replaced. Noncorrodible pipes and fittings shall be repaired or replaced in accordance with the manufacturer's specifications.

5. Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping shall have the secondary containment tested for tightness according to the manufacturer's instructions, in accordance with LAC 33:XI.501.A, or according to requirements established by the department within 30 days following the repair. For all other repairs to tanks and piping, tanks and piping shall be tightness tested in accordance with LAC 33:XI.701.A.3 and B.2 or another test method that has been given prior approval by the department after it determined the method to be no less protective of human health and the environment. The tightness testing shall be conducted within 30 days after the date that the repair is completed.

a. Repairs to containment sumps shall be made in accordance with the containment sump manufacturer requirements, the containment sump repair equipment manufacturer requirements, or in accordance with LAC 33:XI.501.A.

b. Containment sump repair equipment used to repair a containment sump must be compatible with the product stored in the UST system.

6. Within six months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with LAC 33:XI.503.A.2 and 3 to ensure that it is operating properly.

7. ....

8. Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill equipment shall be tested or inspected, as appropriate, in accordance with LAC 33:XI.511 to ensure that it is operating properly.

a. Repairs to spill prevention equipment shall be made in accordance with spill prevention manufacturer requirements, spill prevention equipment repair manufacturer requirements, or in accordance with LAC 33:XI.501.A.

b. Spill prevention repair equipment used to repair spill prevention equipment must be compatible with the product stored in the UST system.

9. If a tank is repaired by addition of an internal liner, the lining shall be inspected within 10 years of installation and every five years thereafter in accordance with LAC 33:XI.303.E.3.a. If the internal lining is no longer performing in accordance with the original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally-recognized association or independent testing laboratory, then the lined tank shall be permanently closed in accordance with LAC 33:XI.Chapter 9.

B. Owners and operators of UST systems shall maintain records, in accordance with LAC 33:XI.509.B, of each repair until the UST system is permanently closed or undergoes a change-in-service in accordance with LAC 33:XI.Chapter 9.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007), LR 34:2119 (October 2008), amended by the Office of the Secretary, Legal Division, LR 38:2761 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2144 (November 2017), LR 44:1599 (September 2018).

#### **§509. Reporting and Recordkeeping**

A. Reporting. Owners and operators shall submit the following information to the department:

1.a. applicable registration forms (UST-REG-01 and 02 or UST-REG) for all UST systems (LAC 33:XI.301), including certification of installation and verification of installer certification for new UST systems (LAC 33:XI.303.D.6.b); and

b. notification when any person assumes ownership of a UST system (LAC 33:XI.301.C.5);

2. - 3. ...

4. notification before permanent closure or change-in-service (LAC 33:XI.905);

5. results of the site investigation conducted at permanent closure (LAC 33:XI.907);

6. results of the temporary closure site investigation (LAC 33:XI.903.E);

7. notification within 30 days of September 20, 2018, and within 30 days prior to UST systems storing or switching to certain regulated substances (LAC 33:XI.505.C); and

8. notification before and/or after UST system repairs (LAC 33:XI.507.A.1).

B. Recordkeeping. Owners and operators shall maintain the following information:

1.a. a corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (LAC 33:XI.303.D.1.d and D.2.c); and

b. a corrosion expert's design documentation for all field-installed corrosion protection systems (LAC 33:XI.303.D.1.b.ii and D.2.b.ii);

2. - 3. ...

4. documentation of compliance with release detection requirements (LAC 33:XI.705);

5.a. copies of the most current applicable registration forms (UST-REG-01 and 02 or UST-REG) filed with the department; and

b. a copy of the current registration certificate (LAC 33:XI.301.C.7 and 8);

6. documentation of the type and construction of the tank, piping, leak detection equipment, corrosion protection equipment, and spill and overfill protection equipment currently in use at the site;

7. documentation of permanent closure, where applicable;

8. documentation of compatibility for the UST system (LAC 33:XI.505.D);

9. documentation of compliance with spill prevention equipment testing, overfill prevention equipment inspections, and containment sumps used for interstitial monitoring of piping testing (LAC 33:XI.511.C);

10. documentation of periodic walkthrough inspections (LAC 33:XI.513.B);

11. documentation of shear valve inspection and testing (LAC 33:XI.515.C); and

12. documentation of operator training (LAC 33:XI.611).

C. Availability and Maintenance of Records. Owners and operators shall either keep the records required at the UST site and immediately available for the department's inspection, or keep them at a readily available alternative site and provide them to the department for inspection upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of Environmental Assessment, LR 31:1070 (May 2005), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 32:393 (March 2006), amended LR 34:2119 (October 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1600 (September 2018).

**§511. Periodic Testing of Spill Prevention Equipment and Containment Sumps used for Interstitial Monitoring of Piping and Periodic Inspection of Overfill Prevention Equipment**

A. Owners and operators of UST systems with spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping shall meet the following requirements to ensure the equipment is operating properly and it will prevent releases to the environment.

1. Spill prevention equipment (e.g., a catch basin, spill bucket, or other spill containment device) shall prevent releases to the environment by meeting one of the following requirements.

a. The equipment is double-walled and the integrity of both walls is periodically monitored at a frequency no less than the frequency of the walkthrough inspections described in LAC 33:XI.513. Owners and operators shall begin meeting Subparagraph b of this Paragraph and conduct a test within 30 days of discontinuing periodic monitoring of the equipment.

b. The spill prevention equipment is tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

i. requirements developed by the manufacturer (owners and operators may use this option only if the manufacturer has developed requirements);

ii. in accordance with LAC 33:XI.501.A; or

iii. requirements developed by the department to be no less protective of human health and the environment than the requirements listed in Clauses i and ii of this Subparagraph.

2. Containment sumps used for interstitial monitoring of piping shall prevent releases to the environment by meeting one of the following requirements.

a. The equipment is double-walled and the integrity of both walls is periodically monitored at a frequency not less than the frequency of the walkthrough inspections described in LAC 33:XI.513. Owners and operators shall begin meeting Subparagraph b of this Paragraph and conduct a test within 30 days of discontinuing periodic monitoring of the equipment.

b. The containment sump used for interstitial monitoring of piping is tested at least once every three years to ensure the equipment is liquid-tight by using vacuum, pressure, or liquid testing in accordance with one of the criteria in Clauses 1.b.i–iii of this Subsection.

3. Overfill prevention equipment shall be inspected at least once every three years. At a minimum, the inspection shall ensure that the overfill prevention is set to activate at the correct level specified in LAC 33:XI.303.D.3.a.ii and will activate when regulated substance reached that level. Inspections shall be conducted in accordance with one of the criteria in Paragraph A.1.b.i–iii. of this Section.

B. Owners and operators shall begin meeting the following requirements.

1. For UST systems in use on or before September 20, 2018 the initial spill prevention equipment test, containment sump test, and overfill prevention equipment inspection shall be conducted no later than September 20, 2021.

2. For UST systems brought into use after September 20, 2018, these requirements apply at installation.

C. Owners and operators shall maintain records for spill prevention equipment, containment sumps used for interstitial monitoring of piping, and overfill prevention equipment in accordance with LAC 33:XI.509.B as follows:

1. all records of testing or inspection shall be maintained for three years; and/or

2. for spill prevention equipment and containment sumps used for interstitial monitoring of piping not tested every three years, documentation showing that the prevention equipment is double-walled and the integrity of both walls is periodically monitored shall be maintained for as long as the equipment is periodically monitored.

D. Owners and operators shall comply with the following requirements whenever a test of spill prevention equipment or

containment sumps used for interstitial monitoring of piping or an inspection of overfill prevention equipment fails.

1. Failed equipment shall be repaired or replaced within 30 days of failing the test or inspection unless an alternative timeframe is granted, in writing, by the department.

2. Repairs to failed equipment shall be conducted in accordance with LAC 33:XI.507.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1601 (September 2018).

### **§513. Periodic Operation and Maintenance**

#### **Walkthrough Inspections**

A. To properly operate and maintain UST systems, not later than September 20, 2021, owners and operators shall meet one of the following:

1. conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below:

a. every 30 days (exception: spill prevention equipment at UST systems receiving deliveries at intervals greater than 30 days may be checked prior to each delivery):

i. for spill prevention equipment:

(a). visually check for damage;

(b). remove liquid and debris;

(c). check for and remove obstructions in the fill

pipe;

(d). check the fill cap to make sure it is secured on the fill pipe; and

(e). for double-walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and

ii.(a). for release detection equipment—check to make sure the release detection equipment is operating with no alarms or unusual operating conditions present; and

(b). ensure records of release detection testing are reviewed and current; and

b. every 12 months:

i. for any containment sump installed after December 20, 2008, and any containment sump used for interstitial monitoring of piping:

(a). visually check for damage to the sump and equipment within the sump;

(b). visually check for leaks to the containment area;

(c). visually check for releases to the environment;

(d). remove liquid and debris from containment sumps; and

(e). for double-walled sumps with interstitial monitoring, check for a leak in the interstitial area;

ii. for containment sumps installed before December 20, 2008, that are not used for interstitial monitoring of piping:

(a). visually check for damage to equipment within the sump;

(b). visually check for releases in the containment sump and to the environment;

(c). visually check for the presence of cathodic protection if the sump contains water that is in contact with metal components that routinely contain product; and

(d). remove any debris within the sump;

iii. for submersible turbine pump and under-dispenser areas that do not have containment sumps:

(a). visually check for damage to the equipment within the area;

(b). visually check for releases to the environment;

(c). visually check for the presence of cathodic protection if any metal components that routinely contain product are in contact with soil, backfill, or water; and

(d). remove any debris;

iv. for hand-held release detection equipment—check devices (e.g., tank gauge sticks or groundwater bailers) for operability and serviceability;

2. conduct operation and maintenance walkthrough inspections in accordance with LAC 33:XI.501.A that checks equipment comparable to Paragraph 1 of this Subsection; or

3. conduct operation and maintenance walkthrough inspections in accordance with requirements developed by the department that checks equipment comparable to Paragraph 1 of this Subsection.

B. Owners and operators shall maintain records in accordance with LAC 33:XI.509.B of operation and maintenance walkthrough inspections for three years. Records shall include:

1. a list of the areas checked;

2. whether each area checked was acceptable or needed action taken;

3. a description of actions taken to correct an issue; and

4. delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

C. Owners and operators shall comply with the following requirements whenever an inspection of spill prevention equipment and containment sumps used for interstitial monitoring fails and requires a repair.

1. Failed equipment that requires a repair shall be repaired or replaced within 30 days of failing the inspection, unless an alternative timeframe is granted in writing by the department.

2. Repairs to failed equipment shall be conducted in accordance with LAC 33:XI.507.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1602 (September 2018).

### **§515. Periodic Testing of Shear Valves**

A. Owners and operators of UST systems with shear valves shall meet the following requirements to ensure the



equipment is operating properly and will prevent releases to the environment.

1. Shear valves (e.g., impact valves, emergency shutoff valves, and crash valves) shall be inspected and tested at least once every 12 months to ensure the equipment is properly anchored in accordance with the manufacturer requirements and tripped to ensure that product flow will be stopped in accordance with one of the following:

a. requirements developed by the manufacturer (owners and operators may use this option only if the manufacturer has developed requirements);

b. in accordance with LAC 33:XI.501.A; or

c. requirements developed by the department to be no less protective of human health and the environment than the requirements listed in Clauses a and b of this Subparagraph.

B. Owners and operators shall meet the following requirements for:

1. UST systems in use on or before September 20, 2018, the shear valve test shall be conducted not later than September 20, 2021; or

2. UST systems brought into use after September 20, 2018, these requirements apply at installation.

C. Owners and operators shall maintain shear valve inspection and test records, in accordance with LAC 33:XI.509.B for three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1603 (September 2018).

## §599. Appendix A—Industry Codes and Standards\*

### A. API Standards

American Petroleum Institute 1220 L Street, N.W., Washington, DC 20005-4070	
Applicable Regulations**	Codes and Standards
LAC 33:XI.501.B	API Recommended Practice 1007, "Loading and Unloading of MC306/DOT 406 Cargo Tank Motor Vehicles"
LAC 33:XI.905.D	API Recommended Practice 1604, "Closure of Underground Petroleum Storage Tanks"
LAC 33:XI.303.D.6.a	API Publication 1615, "Installation of Underground Petroleum Storage Systems"
LAC 33:XI.501.B	The transfer procedures described in API Recommended Practice 1621, "Bulk Liquid Stock Control at Retail Outlets"*****
LAC 33:XI.505.B	API Recommended Practice 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"
LAC 33:XI.303.E.3	API Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"****
LAC 33:XI.303.E.3.a.ii LAC 33:XI.507.A.2 LAC 33:XI.905.D	API Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks"
LAC 33:XI.303.D.2.b LAC 33:XI.303.E.3 LAC 33:XI.303.E.4 LAC 33:XI.305.B LAC 33:XI.305.C	API Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"
LAC 33:XI.905.D	API Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning"

American Petroleum Institute 1220 L Street, N.W., Washington, DC 20005-4070	
Applicable Regulations**	Codes and Standards
LAC 33:XI.905.D	API Recommended Practice 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks"
LAC 33:XI.507.A.2	API Recommended Practice RP 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines"

### B. ASTM Standards

ASTM International 100 Barr Harbor Drive, West, Conshohocken, PA 19428-2959	
Applicable Regulations**	Codes and Standards
LAC 33:XI.803.B	ASTM Standard G158, "Standard Guide for Three Methods of Assessing Buried Steel Tanks"

### C. FTPI Standards

Fiberglass Tank and Pipe Institute 8252 S. Harvard Avenue, Suite 102, Tulsa, OK 74137	
Applicable Regulations**	Codes and Standards
LAC 33:XI.507.A.2	FTPI RP T-95-01, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks"
LAC 33:XI.507.A.5	FTPI RP 2007-2, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space"

### D. KWA Standards

Ken Wilcox Associates, Inc. 1125 Valley Ridge Drive, Grain Valley, MO 64029	
Applicable Regulations**	Codes and Standards
LAC 33:XI.303.E.3.a.ii	KWA Recommended Practice, "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera"

### E. NIOSH Standards

National Institute for Occupational Safety and Health 1600 Clifton Road, Atlanta, GA 30329	
Applicable Regulations**	Codes and Standards
LAC 33:XI.905.D	NIOSH Publication 80-106, "Criteria for a Recommended Standard for Working in Confined Spaces"

### F. NACE Standards

NACE International 15835 Park Ten Place, Houston, TX 77084	
Applicable Regulations**	Codes and Standards
LAC 33:XI.303.D.2.b LAC 33:XI.303.E.4 LAC 33:XI.305.B LAC 33:XI.305.C LAC 33:XI.503.A.2 LAC 33:XI.803.B	NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems"

<b>NACE International</b> <b>15835 Park Ten Place, Houston, TX 77084</b>	
<b>Applicable Regulations**</b>	<b>Codes and Standards</b>
LAC 33:XI.303.D.1.b LAC 33:XI.303.D.2.b LAC 33:XI.303.E.4 LAC 33:XI.305.B LAC 33:XI.305.C LAC 33:XI.503.A.2 LAC 33:XI.507.A.2 LAC 33:XI.803.B	NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection"
LAC 33:XI.303.E.3	National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"****
LAC 33:XI.503.A.2	NACE International Test Method TM0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems"
LAC 33:XI.503.A.2	NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems"

#### G. NFPA Standards

<b>National Fire Protection Association</b> <b>1 Batterymarch Park, Quincy, MA 02169-7471</b>	
<b>Applicable Regulations**</b>	<b>Codes and Standards</b>
LAC 33:XI.303.D.6.a LAC 33:XI.507.A.2	NFPA Standard 30, "Flammable and Combustible Liquids Code"
LAC 33:XI.303.D.6.a	NFPA Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages"
LAC 33:XI.507.A.2 LAC 33:XI.905.D	NFPA Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair"
LAC 33:XI.501.B	The transfer procedures described in NFPA Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids"

#### H. NLPA Standards

<b>National Leak Prevention Association</b> <b>Box 1643, Boise, ID 83701</b>	
<b>Applicable Regulations**</b>	<b>Codes and Standards</b>
LAC 33:XI.303.E.3	NLPA Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection"****
LAC 33:XI.507.A.2	NLPA Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks"
LAC 33:XI.303.E.3.a.ii	NLPA Standard 631, Chapter B, "Future Internal Inspection Requirements for Lined Tanks"
LAC 33:XI.803.B	NLPA Standard 631, Chapter C, "Internal Inspection of Steel Tanks for Retrofit of Cathodic Protection"

#### I. PEI Standards

<b>Petroleum Equipment Institute</b> <b>Box 2380, Tulsa, OK 74101-2380</b>	
<b>Applicable Regulations**</b>	<b>Codes and Standards</b>
LAC 33:XI.303.D.6.a	PEI Recommended Practice RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"

<b>Petroleum Equipment Institute</b> <b>Box 2380, Tulsa, OK 74101-2380</b>	
<b>Applicable Regulations**</b>	<b>Codes and Standards</b>
LAC 33:XI.513.A.2	PEI Recommended Practice RP900, "Recommended Practices for the Inspection and Maintenance of UST Systems"
LAC 33:XI.507.A.5 LAC 33:XI.511.A.1.b LAC 33:XI.511.A.2.b LAC 33:XI.511.A.3 LAC 33:XI.515.A.1 LAC 33:XI.703.A.2.d	PEI Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"

#### J. STI Standards

<b>Steel Tank Institute</b> <b>944 Sonata Court, Lake Zurich, IL 60047</b>	
<b>Applicable Regulations**</b>	<b>Codes and Standards</b>
LAC 33:XI.303.D.2.b LAC 33:XI.303.E.4 LAC 33:XI.305.B LAC 33:XI.305.C	STI Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems"
LAC 33:XI.303.D.1.c	STI Specification F922, "Steel Tank Institute Specification for Permatank®"
LAC 33:XI.507.A.2	STI Recommended Practice R972 "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks"
LAC 33:XI.303.D.1.b	Steel Tank Institute, "STI-P3® Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks"
LAC 33:XI.303.D.1.b	STI Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks"
LAC 33:XI.303.D.1.c	STI ACT-100® Specification F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks"
LAC 33:XI.303.D.1.c	STI ACT-100U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks"
LAC 33:XI.503.A.2	STI Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs"
LAC 33:XI.507.A.5	STI Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks"

#### K. UL Standards

<b>Underwriters Laboratories Inc.</b> <b>333 Pfingsten Road, Northbrook, IL 60062</b>	
<b>Applicable Regulations**</b>	<b>Codes and Standards</b>
LAC 33:XI.303.D.1.b	UL Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids"
LAC 33:XI.303.D.2.a	UL Standard 971, "Non-Metallic Underground Piping for Flammable Liquids"
LAC 33:XI.303.D.1.a	UL Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures"
LAC 33:XI.303.D.1.b LAC 33:XI.303.D.1.c	UL Standard 1746, "External Corrosion Protection Systems for Steel Underground Storage Tanks"
LAC 33:XI.303.D.2.b LAC 33:XI.303.E.4	UL Standard 971A, "Outline of Investigation for Metallic Underground Fuel Pipe"

L. UL of Canada Standards

Underwriters Laboratories Inc. 333 Pfingsten Road, Northbrook, IL 60062-2096	
Applicable Regulations**	Codes and Standards
LAC 33:XI.303.D.1.a	UL of Canada Standard S615, "Standard for Reinforced Plastic for Flammable and Combustible Liquids"
LAC 33:XI.303.D.1.b	UL of Canada Standard S603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids"
LAC 33:XI.303.D.1.b	UL of Canada Standard S603.1, "Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids"
LAC 33:XI.303.D.1.b	UL of Canada Standard S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems"
LAC 33:XI.303.D.2.a	UL of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids"

Section 599, Appendix A—Industry Codes and Standards: Footnotes

\*Industry codes and standards are copyrighted and are available only from the developing organizations. These codes and standards must be purchased directly from the developing organizations.

\*\*UST owners shall comply with the version of the code of practice that is in place at the time the UST system work is performed.

\*\*\*Historical code of practice listed as an option for complying with LAC 33:XI.303.E.3 by December 22, 1998.

\*\*\*\*Contains further guidance on spill and overfill prevention.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., 2194, and 2194.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, LR 31:1070 (May 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1603 (September 2018).

## Chapter 6. Training Requirements for Underground Storage Tank System Operators

### §601. Purpose

A. ...

B. The requirements outlined in this Chapter apply to UST systems regulated under this Part, except those excluded by regulation in LAC 33:XI.101.B and C.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 36:313 (February 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1605 (September 2018).

### §603. Underground Storage Tank Operator Classes

A. There shall be three classes of UST operators, identified as class A, class B, and class C.

1. Designation. Owners of UST systems described in LAC 33:XI.601.B shall designate for each UST system or group of UST systems at a facility, at least one named individual for each class of operators.

a. - b. ...

c. Class A and B UST operators are not required to be on-site during hours of operation if a class C UST operator is present during hours of operation.

d. Class A and B UST operators are required for all temporarily closed UST facilities.

e. During hours of operation, UST facilities shall have at least one certified UST operator (either a class A, class B, or class C UST operator) present at the UST facility, except when a UST facility is unmanned. A UST facility is considered unmanned when there is no attendant present at the facility who could respond to alarms or emergencies caused by spills or overfills from the UST system. Examples of UST facilities that may be un-manned at times include, but are not limited to;

- i. card lock or card access fueling stations with no attendant present at the time of operation;
- ii. telecommunication towers or utility transfer stations serviced by emergency generator USTs;
- iii. unattended UST systems located at industrial facilities; and
- iv. temporarily closed UST facilities.

A.2. - B.1.a. ...

b. Qualifications and Training. Class A UST operators shall be trained in and have a general knowledge of the requirements of these regulations, including, but not limited to:

- i. the UST registration;
- ii. system components;
- iii. product and equipment compatibility and demonstration;
- iv. spill and overfill prevention;
- v.(a). corrosion protection; and
- (b). release detection requirements and
- (c). the UST recordkeeping and notification requirements;
- vi. release and suspected release reporting and response requirements;
- vii. temporary and permanent closure requirements;
- viii. operator training requirements; and
- ix. financial responsibility requirements.

2. - 2.a....

b. Qualifications. Class B UST operators:

i. shall be capable of monitoring, maintaining, and ensuring compliance with all:

- (a). the release detection and prevention methods and equipment requirements;
- (b). the release detection and prevention recordkeeping and reporting requirements; and
- (c). the release detection equipment performance standards; and

ii. shall be capable of ensuring that class C UST operators;

(a). are trained in facility-specific emergency procedures and notification requirements; and

(b). that these procedures and requirements are posted for the use of class C UST operators.

c. Training. Class B UST operators shall be trained in and have knowledge of the following:

- i. UST system components;

- ii. operation and maintenance;
- iii. spill and overflow prevention;
- iv. release detection and related reporting;
- v. corrosion protection;
- vi. emergency response procedures;
- vii. product and equipment compatibility and demonstration;
- viii. reporting, recordkeeping, testing, and inspections; and
- ix. training requirements for class C UST operators.

3. - 3.a. ...

b. Training. Class C UST operators shall be trained in emergency response procedures, which shall include the operation of emergency shut-off equipment, initial response procedures to alarms and releases, and required notifications to emergency responders and to the designated class A and class B operators of a UST system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 36:313 (February 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1605 (September 20, 2018).

#### **§605. Acceptable UST Operator Training and Certification Processes**

A. Training. Operator training shall evaluate operator fulfillment of the training requirements described for each class of operator in LAC 33:XI.603. The following is a list of acceptable approaches to meet the operator training requirements.

1. Acceptable Training for Class A and Class B UST Operators. Class A and class B UST operators shall complete a UST operator training seminar that includes the information listed in LAC 33:XI.603.B.1 or 2, respectively, and that has received approval by the department. This program may include in-class or hands-on training performed, contracted for, or approved by the department, and shall include an evaluation of operator knowledge through testing, practical demonstration, or other tools deemed acceptable by the department.

2. Acceptable Training for Class C UST Operators

a. Class A or class B UST operators shall ensure that the UST facility's class C UST operators complete training in emergency procedures that includes the information listed in LAC 33:XI.603.B.3. Class C UST operator training programs may include in-class, hands-on, on-line, or any other training format deemed acceptable by the class A or class B UST operator.

b. UST owners and class B UST operators shall ensure that site-specific notices that include site-specific emergency procedures, the location of emergency shut-off devices, and appropriate emergency contact telephone numbers are posted in a prominent area at the UST facility that is easily visible to the class C UST operator.

B. - B.1. ...

2. Class C UST Operators. Certified class A or class B UST operators for a UST facility shall submit, to the department or a department-approved contractor, a list of all class C UST operators at that facility who have been trained, and the department or department-approved contractor will provide each such class C UST operator with written

verification of successful training completion in the form of a training certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 36:314 (February 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1606 (September 20, 2018).

#### **§607. Underground Storage Tank Operator Training Deadlines**

A. On or after February 20, 2010, owners of UST systems shall designate their class A and class B UST operators and provide these designations to department personnel or to department-contracted inspectors during department or contract inspections.

B. All class A and class B UST operators shall have completed an acceptable operator training course as specified in LAC 33:XI.605 by August 8, 2012.

C. All class C UST operators shall have completed an acceptable operator training course as specified in LAC 33:XI.605 by August 8, 2012.

D. After August 8, 2012, UST owners shall require that all newly-designated class A or class B UST operators complete an acceptable operator training course as specified in LAC 33:XI.605 within 30 days after assuming operation and maintenance responsibilities at the UST system.

E. After August 8, 2012, UST owners shall require that all newly-designated class C UST operators complete an acceptable operator training course as specified in LAC 33:XI.605 before assuming unsupervised responsibility for responding to emergencies at UST system facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 36:315 (February 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1606 (September 20, 2018).

#### **§609. Underground Storage Tank Operator Training Frequency**

A. Certified class A and class B UST operators shall be re-trained in accordance with LAC 33:XI.603 and 605 within three years of their last training date.

1. - 2. ...

B. Certified class C UST operators may only work at UST facilities owned by the UST owners that provided their initial training without having to be re-trained. Class C UST operators shall be re-trained prior to assuming responsibility at a facility owned by a different UST owner that did not provide the initial training.

C. When issues of noncompliance are noted at a facility, class A and/or class B UST operators, as determined by the department for that UST facility, shall attend either a department-sponsored compliance class that addresses the noted noncompliant areas or an acceptable operator training course as specified in LAC 33:XI.605, as determined by the department, within the time frame given in the notification by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 36:315 (February 2010), amended by the Office of the

**§611. Documentation of Underground Storage Tank Operator Training**

A. Owners and operators shall maintain the following records demonstrating compliance with UST operator training requirements for operators associated with the facility:

1. - 2. ...

B. Owners and operators shall either keep the required training records at the UST site and immediately available for the department's inspection, or at a readily available alternative location and provide them to the department for inspection upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 36:315 (February 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1607 (September 20, 2018).

**Chapter 7. Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response**

**§701. Methods of Release Detection**

A. Tanks. Each method of release detection for tanks used to meet the requirements of LAC 33:XI.703.B shall be conducted in accordance with the following.

1. Inventory Control. Product inventory control (or another test of equivalent performance) shall be conducted monthly in a manner to ensure the detection of any release as small as 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner.

a. Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank shall be recorded each operating day.

b. The equipment used shall be capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch.

c. Inputs of regulated substances shall be reconciled with delivery receipts measuring the tank inventory volume before and after delivery.

d. Deliveries shall be made through a drop tube that extends to within 1 foot of the tank bottom.

e. Product dispensing shall be metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

f. Measurements of any water level in the bottom of the tank shall be made to the nearest 1/8 of an inch at least once a month.

g. ...

2. Manual Tank Gauging. Tanks having a nominal capacity of 550 gallons or less and tanks having a nominal capacity of 551 to 1,000 gallons that meet the tank diameter criteria in the table in Subparagraph 2.d of this Subsection may use manual tank gauging as the sole method of release detection. All other tanks with a nominal capacity of 551-2,000 gallons may use this method in place of the manual inventory control described in Paragraph 1 of this Subsection. Tanks having a nominal capacity of greater than 2,000 gallons may not use this method to meet the requirements of this Subsection. Manual tank gauging shall meet the following requirements.

a. Tank liquid levels shall be measured at the beginning and ending of a period using the appropriate minimum duration of the test provided in the table in Paragraph 2.d of this Section, during which no liquid is added to or removed from the tank. For the purposes of Subparagraph d of this Paragraph, this constitutes one test.

b. Liquid level measurements shall be based on an average of two consecutive stick readings at both the beginning and ending of the period.

c. The equipment used shall be capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch.

d. A leak shall be suspected and subject to the requirements of LAC 33:XI.707-713 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table.

Nominal Tank Capacity	Minimum Duration of Test	Weekly Standard (One Test)	Monthly Standard (Average of 4 Tests)
550 gallons or less	36 hours	10 gallons	5 gallons
551-1000 gallons (when tank diameter is 64 inches)	44 hours	9 gallons	4 gallons
551-1000 gallons (when tank diameter is 48 inches)	58 hours	12 gallons	6 gallons
551-1000 gallons (also requires periodic tank tightness testing)	36 hours	13 gallons	7 gallons
1001-2000 gallons (also requires periodic tank tightness testing)	36 hours	26 gallons	13 gallons

3. Tank Tightness Testing. Tank tightness testing (or another test of equivalent performance) shall be capable of detecting a 0.1-gallon-per-hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

**4. Automatic Tank Gauging (ATG)**

a. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control shall meet the following requirements:

i. the automatic product level monitor test shall be capable of detecting a 0.2-gallon-per-hour leak rate from any portion of the tank that routinely contains product;

ii. the automatic tank gauging equipment shall meet the inventory control requirements of Subparagraphs 1.b and 1.f of this Subsection (or another test of equivalent performance); and

iii. the test shall be performed with the system operating in one of the following modes:

(a). in-tank static testing conducted at least once every 30 days; or

(b). continuous in-tank leak detection operating on an uninterrupted basis or operating within a process that allows the system to gather incremental measurements to determine the leak status at least once every 30 days.

**5. External Release Detection Devices**

a. General. External release detection devices (RDDs) consist of slotted (screened) piping installed within the excavation zone to permit either the testing or monitoring of vapors or the testing or monitoring for liquids on the water table. All RDDs shall meet the following requirements.

i. All RDDs shall have a 4-inch inside diameter and be constructed of either polyvinyl chloride (PVC), polytetrafluoroethylene (PTFE), or stainless steel, and shall be chemically compatible with the stored product. The screened interval shall be commercially fabricated, slotted, or continuously wound. Screen size shall be 0.01 inches. No solvents, glues, epoxies, thermal processes, or rivets shall be used.

ii. The screened interval shall extend from 1 foot beneath the ground surface through the entire excavation zone.

iii. Each RDD shall be sealed from the ground surface to a depth of 1 foot and provided with a locking cap. Each RDD shall be installed in such a fashion as to preclude the introduction of surface contaminants into the RDD.

iv. No RDD shall be installed within or penetrate native soils unless the hydraulic conductivity of the native soil is no less than 0.01 centimeters per second.

v. If only one UST system is located within the excavation zone, at least two RDDs shall be installed. For excavation zones containing between two and four UST systems, at least four RDDs shall be installed. If more than four UST systems are situated within a common excavation zone, additional RDDs shall be installed as appropriate to ensure adequate coverage for release detection. If, prior to the implementation of these regulations, fewer RDDs than required in this Clause were installed at a specific location, the owner or operator may request a variance by demonstrating to the satisfaction of the administrative authority that the excavation zone in question can be adequately monitored.

vi. A UST owner or operator may request a variance to the RDD construction requirements outlined above by demonstrating to the department that the proposed deviations will allow the excavation zone to be adequately monitored.

b. Vapor Monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone shall meet the following requirements.

i. The materials used as backfill shall be sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area.

ii. The stored regulated substance, or a tracer compound placed in the tank system, shall be sufficiently volatile (e.g., gasoline) to result in a vapor level detectable by the monitoring devices located in the excavation zone in the event of a release from the tank.

iii. The measurement of vapors by the monitoring devices shall not be rendered inoperative by the groundwater, rainfall, or soil moisture, or other known interferences, so that a release could go undetected for more than 30 days.

iv. The level of background contamination in the excavation zone shall not interfere with the method used to detect releases from the tank.

v. The vapor monitors shall be designed and operated to detect any significant increase in concentration

above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system.

vi. In the UST excavation zone, the site shall be assessed to ensure compliance with the requirements in Clauses A.5.b.i-iv of this Section and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product.

vii. Monitoring wells shall be clearly marked and secured to avoid unauthorized access and tampering.

c. Liquid Monitoring. Testing or monitoring for liquids on the water table shall meet the following requirements.

i. The regulated substance stored shall be immiscible in water and have a specific gravity of less than one.

ii. When an RDD is installed in the tank hold backfill, there shall be water present in the RDD during measurement at least once every 30 days in order to use liquid monitoring. When an RDD is installed in native soil, the distance to the water table shall never be more than 20 feet from the ground surface and shall be present in the RDD during measurement at least once every 30 days, and the hydraulic conductivity of the soil(s) between the UST system and the RDD shall not be less than 0.01 centimeters per second (e.g., the soil should consist of gravels, coarse-to-medium sands, coarse silts, or other permeable materials) in order to use liquid monitoring.

iii. The slotted portion of the RDD shall be designed to prevent migration of soils or the filter pack into the RDD and to allow entry of the regulated substance on the water table into the RDD under both high and low groundwater conditions.

iv. The continuous monitoring devices or manual methods used shall be capable of detecting the presence of at least 1/8 of an inch of free product on top of the water within the RDD.

v. Within and immediately below the excavation zone of the UST system, the site shall be assessed to ensure compliance with the requirements in Clauses A.5.c.i-iii of this Section and to establish the number and positioning of devices that will detect releases from any portion of the tank that routinely contains product.

vi. RDD shall be clearly marked and secured to avoid unauthorized access and tampering.

6. ...

a. For double-walled UST systems, the sampling or testing method used shall be capable of detecting a leak through the inner wall in any portion of the tank that routinely contains product. Interstitial monitoring of double-walled or jacketed tanks shall be conducted either continuously by means of an automatic leak sensing device that signals to the operator the presence of any liquid in the interstitial space, or manually every 30 days by means of a

procedure capable of detecting the presence of any liquid in the interstitial space.

b. For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used shall be capable of detecting a release between the UST system and the secondary barrier, and the following criteria shall be met.

i. The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least  $10^{-6}$  centimeters per second for the regulated substance stored) to direct a leak to the monitoring point and permit its detection.

ii. The barrier is compatible with the regulated substance stored so that a leak from the UST system will not cause deterioration of the barrier that would allow a release to pass through undetected.

iii. - vi. ...

c. Tanks with internally fitted liners shall be equipped with an automated device that can detect a leak between the inner wall of the tank and the liner, and the liner shall be compatible with the substance stored.

#### 7. Statistical Inventory Reconciliation (SIR)

a. Release detection methods based on the application of statistical principles to inventory data similar to those described in LAC 33:XI.701.A.1 shall meet the following requirements:

i. report a quantitative result with a calculated leak rate;

ii. be capable of detecting a leak rate of 0.2 gallons per hour or a release of 150 gallons within 30 days; and

iii. use a threshold that does not exceed one-half the minimum detectable leak rate.

b. The UST system owner or operator shall receive a report from the SIR provider/vendor/software that performs the SIR analysis within the 30-day monitoring period for which the analysis was performed.

8. Other Methods. Any other type of release detection method, or combination of methods, can be used if it meets the following requirements.

a. The release detection method can detect a 0.2-gallon-per-hour leak rate or a release of 150 gallons within 30 days with a probability of detection of at least 0.95 and a probability of false alarm of no greater than 0.05.

b. The release detection method has been approved by the Office of Environmental Assessment on the basis of a demonstration by the owner and operator that the method can detect a release as effectively as any of the methods allowed in Paragraphs 3-8 of this Subsection. In comparing methods, the Office of Environmental Assessment shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed on its use by the Office of Environmental Assessment.

B. Piping. Each method of release detection for piping used to meet the requirements of LAC 33:XI.703.B shall be used in accordance with the following.

1. Automatic Line Leak Detectors. Methods that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or by triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch

line pressure within 1 hour. A test of the operation of the leak detector shall be conducted at least once every 12 months in accordance with the following:

a. in accordance with the manufacturer's requirements;

b. by simulating a release in order to determine if the system can detect leaks of 3 gallons-per-hour at 10 pounds per square inch line pressure within 1 hour and is fully operational; and

c. tested to ensure that the submersible pump does not run continuously during normal facility operation.

2. Line Tightness Testing. Periodic testing of piping is acceptable only if such testing can detect a 0.1 gallons per hour leak rate at 1.5 times normal operating pressure.

3. Applicable Tank Methods. Any of the methods in Paragraphs A.4-8 of this Section may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances. Line tightness testing conducted at normal operating pressure with an ATG and pressurized line leak detectors, or with statistical inventory reconciliation must meet a 0.08 gallon-per-hour leak rate in order to qualify as an annual line tightness test.

4. Interstitial Monitoring. Interstitial monitoring of double-walled or jacketed piping shall be conducted either continuously by means of an automatic leak sensing device that signals to the operator the presence of any liquid in the interstitial space or sump, or manually every 30 days by means of a procedure capable of detecting the presence of any liquid in the interstitial space or sump.

a. The interstitial space or sump shall be maintained free of water, debris, or anything that could interfere with leak detection capabilities.

b. Subparagraph a of this Paragraph applies only to containment sumps that are used for interstitial monitoring of piping.

c. Sump sensors that are used for interstitial monitoring of piping shall be installed at the lowest part of the containment sump and in a vertical position, unless otherwise specified by the sensor manufacturer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1072 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007), LR 34:2120 (October 2008), amended by the Office of the Secretary, Legal Division, LR 38:2762 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2144 (November 2017), LR 44:1607 (September 20, 2018).

### **§703. Requirements for Use of Release Detection Methods**

#### **A. Requirements for All UST Systems**

1. Owners and operators of all UST systems shall use a method, or combination of the methods, of release detection described in LAC 33:XI.701.

2. The method of release detection used shall also meet the following requirements.

a. The release detection method used shall be capable of detecting a release from any portion of the tank and

the connected underground piping that routinely contains product.

b. The release detection system shall be installed and calibrated in accordance with the manufacturer's instructions.

c. The release detection system shall meet the performance requirements in LAC 33:XI.701.A, B, or LAC 33:XI.Chapter 8, as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer, or in accordance with the third party evaluations, unless otherwise approved by the department. In addition, methods listed in LAC 33:XI.701.A.2, 3, 4, 7, and 8, LAC 33:XI.701.B.1 and 2, and LAC 33:XI.33.Chapter 8 shall be capable of detecting the leak rate or quantity specified for that method in the corresponding Section of LAC 33:XI.701 or LAC 33:XI.Chapter 8 with a probability of detection of at least 0.95 and a probability of false alarm of no greater than 0.05.

d. The release detection system shall be operated and maintained in accordance with the manufacturer's instructions. Beginning September 20, 2021, the release detection method used shall be operated and maintained, and electronic components shall be tested for proper operation, in accordance with manufacturer's instructions, a code of practice developed by a nationally recognized organization or independent testing laboratory listed in LAC 33:XI.599, or requirements developed by the department that are no less protective of human health and the environment than the two options listed above.

i. A test of the proper operation shall be performed at least once every 12 months and, at a minimum, as applicable to the facility, cover the components and criteria listed in LAC 33:XI.703.A.2.d.ii.(a)-(e).

ii. The equipment listed below that fails testing shall be repaired or replaced within 30 days of the failed test date:

- (a). automatic tank gauge and other controllers:
  - (i). test alarm;
  - (ii). verify configuration; and
  - (iii). test battery backup;
- (b). probes and sensors:
  - (i). inspect for residual buildup;
  - (ii). ensure floats move freely;
  - (iii). ensure shaft is not damaged;
  - (iv). ensure cables are free of kinks and breaks; and
- (v). test alarm operability and communication with the controller;
- (c). automatic line leak detector: test operation to meet criteria in LAC 33:XI.701.B.1;
- (d). vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and/or
- (e). hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

3. When a release detection method operated in accordance with the performance standards in LAC 33:XI.701.A, B, or LAC 33:XI.Chapter 8 indicates that a release may have occurred, owners and operators shall notify the Office of Environmental Assessment in accordance with LAC 33:XI.707. If more than one method of release detection is conducted on a UST system, and, if any one of these release detection methods indicates that the release may have

occurred which cannot be overruled by one of the other methods currently in use, a suspected release shall be reported in accordance with LAC 33:XI.707.

4. The release detection method used shall provide a conclusive result at least once every 30 days. When an inconclusive result is received, the UST owner or operator shall either run another release detection test, where applicable, or conduct an alternate method of release detection in order to obtain a conclusive result for the 30 day monitoring period. If no alternate method of release detection is available, the UST owner or operator may conduct a tank and/or line tightness test in accordance with LAC 33:XI.701.A.3 and/or B.2 within seven days of the end of the 30 day monitoring period in order to satisfy this requirement.

5. Any UST system that cannot apply a method of release detection that complies with the requirements of LAC 33:XI.701-705 shall complete the closure procedures in LAC 33:XI.Chapter 9. For previously deferred UST systems described in LAC 33:XI.101 and LAC 33:XI.Chapter 8, this requirement is applicable after the effective dates described in LAC 33:XI.101.A.1.b and LAC 33:XI.801.A.

B. Additional Requirements for Petroleum and Motor Fuel UST Systems. In addition to the requirements specified in LAC 33:XI.703.A, owners and operators of petroleum and motor fuel UST systems shall provide release detection for tanks and piping as follows.

1. Tanks. Tanks shall be monitored for releases as follows.

a. Tanks installed on or before December 20, 2008, shall be monitored for releases at least once every 30 days using one of the methods listed in LAC 33:XI.701.A.3-8, except for the following.

i. UST systems that meet the performance standards in LAC 33:XI.303.D or E, and the monthly inventory control requirements in LAC 33:XI.701.A.1 or 2, may use tank tightness testing (conducted in accordance with LAC 33:XI.701.A.3) at least every 5 years until 10 years after the tank was installed. Inventory control and manual tank gauging, conducted in accordance with LAC 33:XI.701.A.1 or 2, in conjunction with tank tightness testing are no longer allowed as release detection methods after December 20, 2018.

ii. Tanks with a capacity of 550 gallons or less and tanks with a capacity of 551 to 1000 gallons that meet the tank diameter criteria in LAC 33:XI.701.A.2 may use manual tank gauging (conducted in accordance with LAC 33:XI.701.A.2).

b. Tanks installed after December 20, 2008, or after the date of the extension granted under LAC 33:XI.303.C.2, shall be monitored for releases at least once every 30 days in accordance with LAC 33:XI.701.A.6.

2. Piping. Underground piping that routinely contains regulated substances shall be monitored for releases in a manner that meets one of the following requirements.

a. Piping installed on or before December 20, 2008, shall meet one of the following.

i. Pressurized Piping. Underground piping that conveys regulated substances under pressure shall:

(a). be equipped with an automatic line leak detector in accordance with LAC 33:XI.701.B.1; and

(b). have a line tightness test conducted every 12 months in accordance with LAC 33:XI.701.B.2, or have



monthly monitoring conducted in accordance with LAC 33:XI.701.B.3.

ii. Suction Piping. Underground piping that conveys regulated substances under suction shall either have a line tightness test conducted at least every three years and in accordance with LAC 33:XI.701.B.2, or use a monthly monitoring method conducted in accordance with LAC 33:XI.701.B.3. No release detection is required for suction piping designed and constructed to meet the following standards:

(a). the below-grade piping operates at less than atmospheric pressure;

(b). the below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(c). only one check valve is included in each suction line;

(d). the check valve is located directly below and as close as practical to the suction pump; and

(e). a method is used that allows compliance with Clauses B.2.b.ii-iv of this Section to be readily determined and verified.

b. Piping installed or replaced after December 20, 2008, or after the extension granted under LAC 33:XI.303.C.1 and 2, shall meet one of the following.

i. Pressurized piping shall be monitored for releases at least once every 30 days in accordance with LAC 33:XI.701.B.4 and be equipped with an automatic line leak detector in accordance with LAC 33:XI.701.B.1.

ii. Suction piping shall be monitored for releases at least once every 30 days in accordance with LAC 33:XI.701.B.4. No release detection is required for suction piping that meets the requirements of Subclauses a.ii.(a)-(e) of this Paragraph.

C. Additional Requirements for Hazardous Substance UST Systems. In addition to the requirements of LAC 33:XI.703.A, owners and operators of hazardous substance UST systems shall provide containment that meets the following requirements and monitor the tanks for systems using LAC 33:XI.701.A.6 and the piping for systems using 701.B.4 at least once every 30 days.

1. Secondary containment systems shall be designed, constructed, and installed in accordance with LAC 33:V.4437 to:

a. contain regulated substances leaked from the primary containment until they are detected and removed;

b. prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

c. be checked for evidence of a release at least once every 30 days.

2. Double-walled tanks shall be designed, constructed, and installed to:

a. contain a release from any portion of the inner tank within the outer wall; and

b. detect the failure of the inner wall.

3. External liners (including vaults) shall be designed, constructed, and installed to:

a. contain 100 percent of the capacity of the largest tank within the boundary of the external liner;

b. prevent precipitation or groundwater intrusion from interfering with the ability to contain or detect a release of regulated substances; and

c. surround the tank completely (i.e., the liner shall be capable of preventing lateral as well as vertical migration of regulated substances).

4. Underground piping shall be equipped with secondary containment that satisfies the requirements of this Section (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector, in accordance with LAC 33:XI.701.B.1.

5. For hazardous substance UST systems installed on or before September 20, 2018, other methods of release detection may be used if the owners and operators:

a. demonstrate to the department's satisfaction that the alternate method can detect a release of the stored substance as effectively as any of the methods allowed in LAC 33:XI.701.A.2-7 can detect a release of petroleum;

b. provide information to the department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

c. obtain approval from the Office of Environmental Assessment to use the alternate release detection method before the installation and operation of the new UST system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007), LR 34:1400 (July 2008), LR 34:2120 (October 2008), amended by the Office of the Secretary, Legal Division, LR 38:2762 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2144 (November 2017), LR 44:1609 (September 20, 2018).

#### **§705. Release Detection Recordkeeping**

A. All UST system owners and operators shall maintain records in accordance with LAC 33:XI.509 demonstrating compliance with all applicable requirements of LAC 33:XI.701-703 and LAC 33:XI.803.D. These records shall include the following.

1. All written performance claims pertaining to any release detection system used and documentation of the manner in which these claims have been justified or tested by the equipment manufacturer, installer, or third-party independent testing laboratory must be maintained throughout the operational life of the release detection system. Beginning no later than September 20, 2021, records of the site assessments required under LAC 33:XI.701.A.5.b.vi and LAC 33:XI.701.A.5.c.v shall be maintained as long as the methods are used. Records of site assessments developed after September 20, 2018, shall be signed by a professional engineer or professional geologist,

or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department.

a. The department may waive the site assessment requirement for UST systems that were conducting vapor or groundwater monitoring prior to September 20, 2018, if the applicable requirements of LAC 33:XI.701.A.5.a, b, and c were verified during a compliance evaluation inspection. In these cases, the department will provide a written waiver to the facility that shall be maintained for as long as the methods are used.

2. The results of any sampling, testing, or monitoring shall be maintained for at least three years, except that the results of tank tightness testing conducted in accordance with LAC 33:XI.701.A.3 when used in combination with inventory control and manual tank gauging as a release detection method shall be retained until the next test is conducted, and shall contain, at a minimum, the following information.

a. Inventory Control

i. Inventory control records shall include:

- (a). the tank identifier;
- (b). the month and year of the report;
- (c). the date of the monthly water check and the measured water level in inches;
- (d). the daily start stick inventory in inches and gallons, gallons delivered, gallons pumped, end stick inventory in inches and gallons, the over and short measurements, and the initials of the person conducting the measurements;
- (e). the total gallons pumped for the month;
- (f). cumulative over and short calculation for the month;
- (g). the monthly leak check amount;
- (h). the monthly leak check amount plus 130; and
- (i). the monthly leak check result of pass/fail or yes/no.

b. Manual Tank Gauging

i. Manual tank gauging records shall include:

- (a). the tank identifier;
- (b). the month, day and time of the initial test;
- (c). the first, second and average initial readings;
- (d). the initial test gallons;
- (e). the month, day and time of the end test;
- (f). the first, second and average end readings;
- (g). the end test gallons;
- (h). the change in tank volume calculated weekly and monthly; and
- (i). whether the tank test passes or not weekly and monthly.

c. Tank Tightness Testing. Tank tightness test reports shall include the date of the test, the tank identifier, a qualitative result statement, a calculated leak rate, and any other information needed to verify compliance with LAC 33:XI.703.A.2.c as applicable to the equipment and method used. Raw data generated for each tank tightness test shall be provided to the department upon request.

d. Automatic Tank Gauging (ATG)

i. ATG test reports shall include:

- (a). the time, date, or period covered for the test;
- (b). the tank and/or piping identifier;

(c). a qualitative result of pass, fail, inconclusive, or alarm code where applicable;

(d). a quantitative result with a calculated leak rate; and

(e). any other information needed to verify compliance with LAC 33:XI.703.A.2.c as applicable to the equipment and method used.

e. Vapor Monitoring with RDD

i. Vapor monitoring RDD records shall include:

- (a). the date the analysis was conducted;
- (b). the well identifiers;
- (c). the concentration measured in each well in parts per million;
- (d). a statement or signifier if any of the measured concentrations represents a suspected release (any significant increase in concentration above background); and
- (e). any other information needed to verify compliance with LAC 33:XI.703.A.2.c as applicable to the equipment and method used.

f. Liquid Monitoring with RDD

i. Liquid monitoring RDD records shall include:

- (a). the date the wells are checked;
  - (b). the well identifiers;
  - (c). the amount of product measured in each well;
  - (d). the depth to the water surface in each well;
- and
- (e). any other information needed to verify compliance with LAC 33:XI.703.A.2.c as applicable to the equipment and method used.

g. Tank Interstitial Monitoring (IM)

i. Tank IM records shall include:

- (a). the date of the test;
- (b). the tank identifier;
- (c). a qualitative result statement (i.e., pass or fail, liquid, product or water detected, sensor normal message, dry space, alarm code when applicable, etc.);
- (d). a qualitative result (when applicable); and
- (e). any other information needed to verify compliance with LAC 33:XI.703.A.2.c as applicable to the equipment and method used.

h. Statistical Inventory Reconciliation (SIR)

i. SIR records shall include:

- (a). the month and year of the test;
- (b). the name of the SIR provider/vendor/software and the name and version of the SIR method used for analysis;
- (c). the name and address of the facility;
- (d). a description of the UST system;
- (e). a quantitative result of the leak threshold, the minimum detectable leak rate, and the calculated leak rate for each UST system monitored;
- (f). a qualitative statement of pass, fail, or inconclusive for each UST system monitored; and
- (g). any other information needed to verify compliance with LAC 33:XI.703.A.2.c as applicable to the equipment and method used. (Monthly raw data shall be provided to the department upon request.)

i. Other Method. Any specific records required by the department upon approval of the method, any records needed to demonstrate that the method meets the performance requirements outlined in ALC 33:XI.701.A.8.a, and any other information needed to verify compliance with LAC

33:XI.703.A.2.c as applicable to the equipment and method used.

- j. Line Leak Detector (LLD)
  - i. LLD test results shall include:
    - (a). the date of the test;
    - (b). the LLD identifier;
    - (c). a qualitative result statement;
    - (d). a calculated leak rate;
    - (e). a qualitative statement regarding whether the submersible turbine pump is running continuously or not;
    - (f). any other information needed to verify compliance with LAC 33:XI.703.A.2.c as applicable to the equipment and method used; and
    - (g). raw data generated for each line LLD test shall be provided to the department upon request.
  - k. Line Tightness Test (LTT)
    - i. LTT results shall include:
      - (a). the date of the test;
      - (b). the line identifier;
      - (c). a qualitative result statement;
      - (d). a calculated leak rate;
      - (e). any other information needed to verify compliance with LAC 33:XI.703.A.2.c as applicable to the equipment and method used; and
      - (f). raw data generated for each LTT shall be provided to the department upon request.
    - l. Piping Interstitial Monitoring (IM)
      - i. Piping IM records shall include:
        - (a). the date of the test;
        - (b). the line identifier;
        - (c). a qualitative statement (i.e., pass or fail, liquid, product or water detected, sensor normal message, dry space, alarm code when applicable, etc.);
        - (d). a qualitative result, when applicable; and
        - (e). any other information needed to verify compliance with LAC 33:XI.703.A.2.c as applicable to the equipment and method used.

3. Written documentation of all calibration, maintenance, and repair of release detection equipment used on-site shall be maintained for at least three years after the servicing work is completed. Any schedules of required calibration and maintenance provided by the manufacturer of the release detection equipment shall be retained for five years from the date of installation.

4. The results of annual operation tests conducted in accordance with LAC 33:XI.703.A.2.d shall be maintained for at least three years. At a minimum, the results shall list each component tested, the date each component was tested, indicate whether each component tested meets the criteria in LAC 33:XI.703.A.2.d or needs to have action taken, and a description of any actions taken to correct an issue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1611 (September 20, 2018).

#### **§707. Reporting of Suspected Releases**

A. All owners, operators, employees, agents, contractors, or assigns having knowledge of any of the conditions listed

below shall notify the Office of Environmental Assessment in the manner provided in LAC 33:I.3923 within 24 hours after becoming aware of the occurrence or, if they have knowledge of an emergency condition, shall report it immediately in accordance with LAC 33:I.Chapter 39. Owners and operators of UST systems shall follow the procedures specified in LAC 33:XI.711 after discovery of any of the following conditions.

1. Released regulated substances are discovered at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, UST system backfill, basements, sewer and utility lines, or nearby surface water).

2. Unusual operating conditions are observed (such as the erratic behavior of product-dispensing equipment caused by line leak detector restricting product flow, the sudden loss of product from the UST system, an unexplained presence of water in the tank, or liquid (e.g., product or water) in the interstitial space of secondarily contained systems), unless:

a. the system equipment or component is found not to be releasing regulated substances to the environment;

b. any defective equipment or component is immediately repaired or replaced;

c. for secondarily contained systems conducting interstitial monitoring:

i. except as provided for in LAC 33:XI.701.A.6.b.iv, any water in the interstitial space not used as part of the interstitial monitoring method (e.g., brine filled) is immediately removed; or

ii. if it is verified within 24 hours that the water is from surface water intrusion (e.g., the water intrusion occurred during a heavy rain event). Water shall be removed prior to the next scheduled release detection monitoring event (within 30 days or less).

3. Monitoring results, including investigation of alarms from a release detection method required under LAC 33:XI.703.B and C and LAC 33:XI.803.D indicate that a release may have occurred, unless:

a. the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring conducted within 24 hours does not confirm the initial result;

b. the leak is contained in the secondary containment and:

i. any product resulting from dispenser leaks or spills that is contained in secondary containment sumps is immediately removed upon discovery;

ii. except as provided for in LAC 33:XI.701.A.6.b.iv, any water in the interstitial space not used as part of the interstitial monitoring method (e.g., brine filled) is immediately removed;

iii. any defective equipment or component is immediately repaired or replaced; or

iv. it is verified within 24 hours that the liquid is from surface water intrusion (e.g., the water intrusion happened during a heavy rain event). Water shall be removed prior to the next scheduled release detection monitoring event (within 30 days or less);

c. in the case of inventory control, described in LAC 33:XI.701.A.1, a second month of data does not confirm the initial result; or

d. the alarm was investigated and determined to be a nonrelease event (e.g., from a power surge or caused by filling a tank during release detection testing).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:1677 (August 2004), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:74 (January 2008), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1613 (September 20, 2018).

#### **§709. Investigation Due to Off-Site Impacts**

A. When the department requires it, owners and operators of UST systems shall follow the procedures in LAC 33:XI.711 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances in an off-site location (such as the presence of free product or vapors in soils, basements, sewer and utility lines, or nearby surface and drinking waters).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1614 (September 20, 2018).

#### **§711. Release Investigation and Confirmation Steps**

A. Unless corrective action is initiated in accordance with LAC 33:XI.715, owners and operators shall immediately investigate and confirm all suspected releases of regulated substances requiring reporting under LAC 33:XI.707, using either the following steps or another procedure approved in writing by the department, within the timeframe specified in the following steps.

##### **1. System Test**

a. Within seven days after obtaining knowledge of any of the conditions listed in LAC 33:XI.707 that a release is suspected or requires reporting, or another reasonable period of time determined by the department in writing, owners and operators shall conduct tests according to the requirements for tightness testing in LAC 33:XI.701.A.3 and B.2, or as appropriate, secondary containment testing described in LAC 33:XI.507.A.5.

##### **i. The test shall determine whether:**

(a). a leak exists in that portion of the tank that routinely contains product or the attached delivery piping or both; or

(b). a breach of either wall of the secondary containment has occurred.

ii. If the system test confirms a leak into the interstice or a release, owners and operators shall repair, replace, upgrade, or permanently close the UST system. In addition, owners and operators shall begin corrective action in accordance with LAC 33:XI.715 if the test results for the system, tank, or delivery piping indicate that a release exists. Failed UST systems may be placed into temporary closure if all of the following conditions are met:

(a). failed tanks or their associated piping shall be in the same tank hold as other active or temporarily closed tanks;

(b). site check and/or corrective actions as described in LAC 33:XI.711.A.2 and/or 715.C.1.e shall be conducted;

(c). all product has been removed from the tank and the tank has been cleaned of any residual product and bottom sludge;

(d). the affected tank fill ports are padlocked;

(e). all product piping is disconnected from the tank; and

(f). the tank is prohibited from delivery (red tagged) by the department until the failed tank or piping is repaired, replaced, or permanently closed.

iii. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a release exists and if environmental contamination is not the basis for suspecting a release.

iv. Owners and operators shall either conduct a site check as described in Paragraph 2 of this Subsection or begin corrective action in accordance with LAC 33:XI.715 if the test results for the system, tank, and delivery piping do not indicate that a release exists, but environmental contamination is the basis for suspecting a release.

2. Site Check. Owners and operators shall measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators shall consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Within 20 days after the suspected release notification, or another reasonable period of time determined by the department in writing, owners and operators shall submit a report to the Office of Environmental Assessment summarizing the results of the site check and any resulting information or data. They shall then proceed as follows.

a. If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators shall begin corrective action in accordance with LAC 33:XI.715.

b. If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1614 (September 20, 2018).

#### **§713. Reporting and Cleanup of Spills and Overfills**

A. Owners and operators of UST systems shall immediately stop ongoing aboveground releases to the environment and shall contain and immediately clean up all spills and overfills. Owners and operators of UST systems shall report and begin corrective action in accordance with LAC 33:XI.715 in the following cases.

1. Any spill or overfill of petroleum or motor fuel that has resulted in a release to the environment that exceeds 25 gallons, that causes a sheen on nearby surface water, or results in an *emergency condition*, as defined in LAC 33:I.3905, shall be reported in accordance with LAC 33:I.Chapter 39 immediately, but in no case later than one hour, regardless of the amount released.

2. Any spill or overfill of a hazardous substance that has resulted in a release to the environment that equals or

exceeds the reportable quantity for that substance in LAC 33:I.3931 or results in an *emergency condition*, as defined in LAC 33:I.3905, shall be reported in accordance with LAC 33:I.Chapter 39 immediately, but in no case later than one hour, regardless of the amount released. A release of a hazardous substance equal to or in excess of its reportable quantity shall also be reported immediately (rather than within 24 hours) to the National Response Center, under sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to appropriate authorities under title III of the Superfund Amendments and Reauthorization Act of 1986 (40 CFR 355.40).

B. Follow-up written reports shall be submitted within seven calendar days, as required by LAC 33:I.3925. The written report shall satisfy the requirements of LAC 33:I.3925.B and C.

C. Owners and operators of UST systems shall contain and immediately clean up a spill or overflow of petroleum or motor fuel that is less than 25 gallons and a spill or overflow of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, owners and operators shall immediately notify the department in the manner provided in LAC 33:I.3923 and begin corrective action in accordance with LAC 33:XI.715.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:1677 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 36:1241 (June 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1614 (September 20, 2018).

#### **§715. Release Response and Corrective Action for UST Systems Containing Petroleum, Motor Fuel, or Hazardous Substances**

A. Applicability. Owners and operators of petroleum, motor fuel, or hazardous substance UST systems shall, in response to a confirmed release from the UST system, comply with the requirements of this Section except for USTs excluded under LAC 33:XI.101.B and UST systems subject to the department's Hazardous Waste Regulations. Investigations and corrective actions required by this Section shall comply with LAC 33:I.Chapter 13, Risk Evaluation/Corrective Action Program.

B. Initial Response. When a release is confirmed in accordance with LAC 33:XI.711 or after a release from the UST system is identified in any other manner, owners and operators shall take the following initial response actions within 24 hours of the release.

1. Report the release to the department in accordance with LAC 33:I.3923.

B.2. - C. ...

1. Unless directed to do otherwise by the department, owners and operators shall perform the following abatement measures.

a. - c. ...

d. Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation,

site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator shall comply with applicable state and local regulations and requirements.

e. Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by LAC 33:XI.711.A.2 or the closure site assessment required by LAC 33:XI.907.A. In selecting sample types, sample locations, and measurement methods, the owner and operator shall consider the nature of the stored substance, the type of backfill, depth to groundwater, and other factors as appropriate for identifying the presence and source of the release.

f. ...

g. If the UST system will not be permanently closed, the requirements outlined in LAC 33:XI.711.A.1 shall still be met.

2. Within 20 days after release confirmation or another reasonable period of time determined by the department in writing, owners and operators shall submit a report to the Office of Environmental Assessment summarizing the initial abatement steps taken under Paragraph C.1 of this Section and any resulting information or data.

#### **D. Initial Site Characterization**

1. Unless directed to do otherwise by the department, owners and operators shall assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial response and abatement measures described in Subsection A-C of this Section. This information shall include, but is not necessarily limited to the following:

a. - c. ...

d. results of the free product investigations required under LAC 33:XI.715.C.1.f, to be used by owners and operators to determine whether free product shall be recovered under Subsection E of this Section; and

e. ...

2. Within 60 days of release confirmation or another reasonable period of time determined by the department in writing, owners and operators shall submit the information collected in compliance with Paragraph 1 of this Subsection to the Office of Environmental Assessment in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the department.

E. Free Product Removal. At sites where investigations under Subparagraph C.1.f of this Section indicate the presence of free product, owners and operators shall remove free product to the maximum extent practicable as determined by the Office of Environmental Assessment, while continuing, as necessary, any actions initiated under Subsections B-D of this Section, or preparing for actions required under Subsections F-G of this Section. To meet the requirements of this Subsection, owners and operators shall take the following actions.

1. - 4.g....

#### **F. Investigations for Soil and Groundwater Cleanup**

1. To determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the groundwater, owners and operators shall conduct

investigations of the release, the release site, and the surrounding area possibly affected by the release under any of the following conditions:

a. - d. ...

2. Owners and operators shall submit the information collected under Paragraph 1 of this Subsection as soon as practicable or in accordance with a schedule established by the department.

#### G. Corrective Action Plan

1. At any point after reviewing the information submitted in compliance with Subsections B-D of this Section, the department may require owners and operators to submit additional information or to develop and submit a corrective action plan and schedule for responding to contaminated soils and groundwater. If a plan is required, owners and operators shall submit the plan according to a schedule and format established by the department. Alternatively, owners and operators, after fulfilling the requirements of Subsections B-D of this Section, may choose to submit a corrective action plan and schedule for responding to contaminated soil and groundwater. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the department, and shall modify their plans as necessary to meet this standard.

2. - 2.g....

3. Upon approval of the corrective action plan and schedule or as directed by the department, owners and operators shall implement the plan, including modifications to the plan made by the department. They shall monitor, evaluate, and report the results of implementing the plan in accordance with the approved schedule in a format established by the department.

4. - 4.c....

#### H. Public Participation

1. For each confirmed release that requires a corrective action plan, the responsible owner or operator shall provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, letters to individual households, or personal contacts.

2. The department shall ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

3. ...

4. The department shall give public notice that complies with Paragraph 1 of this Subsection if implementation of an approved corrective action plan does not achieve the established cleanup criteria in the plan, and the department is considering termination of that plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of the Secretary, LR 24:2253 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:1677 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2172 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2762 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2144 (November 2017), LR 44:1615 (September 20, 2018).

### **Chapter 8. UST Systems with Field-Constructed Tanks and Airport Hydrant Fuel Distribution Systems**

#### **§801. General Requirements**

##### **A. Implementation of Requirements**

1. Owners and operators shall comply with the requirements of this Chapter for UST systems with field-constructed tanks and airport hydrant systems as follows.

a. For UST systems installed on or before September 20, 2018, the requirements are effective according the following schedule:

i. upgrading UST systems, general operating requirements, and operator training on or before September 20, 2021;

ii. release detection on or before September 20, 2021; and

iii. release reporting, response investigation, closure, financial responsibility and notification, except as provided in Subsection B of this Section, on or before September 20, 2018.

b. For UST systems installed after September 20, 2018, the requirements apply at installation.

B. Not later than September 20, 2021, all owners of previously deferred UST systems shall submit a one-time notice of tank existence to the department, using the UST-REG form. Owners and operators of UST systems in use as of September 20, 2018, shall demonstrate financial responsibility at the time of submission of the notification form.

C. Except as provided in LAC 33:XI.803, owners and operators shall comply with the requirements of LAC 33:XI *Underground Storage Tanks*.

D. In addition to the codes of practice listed in LAC 33:XI.599, owners and operators may use the military construction criteria, (e.g., United Facilities Criteria (UFC) 3-460-01, *Petroleum Fuel Facilities*) when designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and

**§803. Additions, Exceptions, and Alternatives for UST Systems with Field-Constructed Tanks and Airport Hydrant Systems**

A. Exceptions to Piping Secondary Containment Requirements. Owners and operators may use single walled piping when installing or replacing piping associated with UST systems with field-constructed tanks greater than 50,000 gallons and piping associated with airport hydrant systems. Piping associated with UST systems with field-constructed tanks less than or equal to 50,000 gallons not part of an airport hydrant system shall meet the secondary containment requirements when installed or replaced.

B. Upgrade Requirements. Not later than September 20, 2021, airport hydrant systems and UST systems with field-constructed tanks where installation commenced on or before September 20, 2018 shall meet the following requirements or be permanently closed in accordance with LAC 33:XI.Chapter 9.

1. Corrosion Protection

a. UST system components that routinely contain regulated substances and that are in contact with soil, backfill, or water shall meet one of the following:

i. except as provided in Paragraph A of this Section, the new UST system performance standards for tanks in LAC 33:XI.303.D.a and for piping in LAC 33:XI.303.D.2; or

ii. be constructed of metal and cathodically protected according to a code of practice developed by a nationally recognized organization or independent testing laboratory and meet the following:

(a). cathodic protection shall meet the requirements of LAC 33:XI.303.D.1.b.ii, iii, and iv for tanks and LAC 33:XI.303.D.2.b.ii, iii, and iv for piping; and

(b). tanks greater than 10 years old without cathodic protection shall be assessed to ensure that the tank is structurally free of corrosion holes prior to adding cathodic protection. The assessment shall be by internal inspection or another method determined by the department to adequately assess the tank for structural soundness and corrosion holes.

2. Spill and Overfill Prevention Equipment. To prevent spilling and overfilling associated with product transfers to the UST system, all UST systems with field-constructed tanks and airport hydrant systems shall comply with the new UST system spill and overfill prevention equipment requirements specified in LAC 33:XI.303.D.3.

C. Walkthrough Inspections

1. In addition to the walkthrough inspection requirements in LAC 33:XI.513, owners and operators shall inspect the following additional areas for airport hydrant systems at least once every 30 days if confined space entry according to the Occupational Safety and Health Administration (see 29 CFR 1910) is not required or at least once every 12 months if confined space entry is required and keep documentation of the inspection according to LAC 33:XI.513.B:

a. hydrant pits—visually check for any damage, remove any liquid or debris, and check for any leaks;

b. hydrant piping vaults—check for any piping leaks.

D. Release Detection

1. Owners and operators of UST systems with field-constructed tanks and airport hydrant systems shall begin meeting the release detection requirements described in this Chapter not later than September 20, 2021.

a. Methods of Release Detection for Field-Constructed Tanks

i. Owners and operators of field-constructed tanks with a capacity of less than or equal to 50,000 gallons shall meet the requirements in LAC 33:XI.701-705 (except 701.A.5.b and 701.A.5.c shall be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

(a). conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;

(b). use an automatic tank gauging system to perform release detection at least once every 30 days that can detect a leak rate less than or equal to one gallon per hour. The method shall be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least once every three years;

(c). use an automatic tank gauging system to perform release detection at least once every 30 days that can detect a leak rate less than or equal to two gallons per hour. This method shall be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least once every two years;

(d). perform vapor monitoring conducted in accordance with LAC 33:XI.701.A.5.b for a tracer compound placed in the tank system capable of detecting a 0.1 gallon per hour leak rate at least once every two years;

(e). perform inventory control conducted in accordance with *Department of Defense Directive 4140.25; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual*; or equivalent procedures at least once every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through and:

(i). perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least once every two years; or

(ii). perform vapor monitoring or groundwater monitoring conducted in accordance with LAC 33:XI.701.A.5.b and c, respectively, for the stored regulated substance at least once every 30 days;

(f). another method approved by the department may be used if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in Subparagraphs D.1.a.i.(a)–D.1.a.i.(e) of this Section. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection.

b. Methods of Release Detection for Piping. Owners and operators of underground piping associated with field-constructed tanks less than or equal to 50,000 gallons shall meet the release detection requirements in LAC 33:XI.Chapter 7. Owners and operators of underground piping associated with airport hydrant systems and field-constructed tanks greater than 50,000 gallons shall follow either the requirements of LAC 33:XI.Chapter 7 (except LAC 33:XI.701.A.5.b and c shall be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

i. perform semiannual (once every six months) or annual (once every 12 months) line tightness testing that meets the following requirements:

(a). line tightness test at or above the piping operating pressure in accordance with the following table;

Maximum Leak Detection Rate Per Test Section Volume		
Test Section Volume (gallons)	Semiannual Test (leak detection rate not to exceed gallons per hour)	Annual Test (leak detection rate not to exceed gallons per hour)
<50,000	1.0	0.5
≥50,000 to <75,000	1.5	0.75
≥75,000 to <100,000	2.0	1.0
≥100,000	3.0	1.5

(b). piping segment volumes greater than 100,000 gallons not capable of meeting the maximum 3 gallons per hour leak rate for the semiannual test may be tested at a leak rate up to 6 gallons per hour according to the following schedule:

(i). first test, not later than September 20, 2021, may use up to a 6 gph leak rate;

(ii). second test, between September 20, 2021, and September 20, 2024, may use up to a 6 gph leak rate;

(iii). third test, between September 20, 2024, and September 20, 2025, shall use 3 gph leak rate;

(iv). subsequent tests, after September 20, 2025, begin using semiannual or annual line tightness testing according to the maximum leak rate per test section volume table above;

ii. perform vapor monitoring conducted in accordance with LAC 33:XI.701.A.5.b for a tracer compound placed in the tank system capable of detecting a 0.1 gallon per hour leak rate at least once every two years;

iii. perform inventory control conducted in accordance with *Department of Defense Directive 4140.25; ATA Fuel Facility Operations and Maintenance Guidance Manual*, or equivalent procedures at least once every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through, and perform:

(a). a line tightness test conducted in accordance with Paragraph D 2.a of this Section using the leak rates for the semiannual test at least once every two years; or

(b). vapor monitoring or groundwater monitoring conducted in accordance with LAC 33:XI.701.A.5.b and c, respectively, for the stored regulated substance at least once every 30 days;

iv. another method approved by the department may be used if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in Paragraphs D.1.b.i–D.1.b.iii of this Section. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability of detection.

c. Recordkeeping for Release Detection. Owners and operators shall maintain release detection records according to the recordkeeping requirements in LAC 33:XI.705.

E. Applicability of Closure Requirements for Previously Closed UST Systems. When directed by the department, the owner and operator of a UST system with field-constructed

tanks or airport hydrant systems permanently closed before September 20, 2018, shall assess the excavation zone and close the UST system in accordance with LAC 33:XI.905 and 907 if releases from the UST system may, in the judgement of the department, pose a current or potential threat to human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1617 (September 20, 2018).

## Chapter 9. Out-of-Service UST Systems and Closure §901. Applicability to Previously Closed UST Systems

A. The owner and operator of a UST system permanently closed before July 20, 1990, shall assess the excavation zone and close the UST system in accordance with this Chapter if directed to do so by the department. The department shall direct that such closure be undertaken if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, LR 31:1073 (May 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1618 (September 20, 2018).

## §903. Temporary Closure

A. When a UST system is temporarily closed, owners and operators shall continue operation and maintenance of corrosion protection in accordance with LAC 33:XI.303 and 503, regardless of the amount of product stored in the UST system. The requirements of this Section apply to all tanks, piping, metal flexible hoses, and submersible turbine pumps.

1. Impressed current systems on temporarily closed UST systems shall be operated continuously to provide corrosion protection to the metal components of external portions of the UST system that are in contact with soil, backfill, or water, and shall be tested every three years in order to determine whether cathodic protection is adequate, in accordance with LAC 33:XI.503.A.2.

a. If an impressed current system has been inoperative for more than six months or if the impressed current system has not been repaired within nine months after failing a corrosion protection test, the UST owner shall either:

i. have the corrosion protection system repaired, retested, and recommissioned under the supervision of a corrosion expert within 90 days; or

ii. permanently close the UST system in accordance with LAC 33:XI.905 and 907.

2. Impressed current system rectifiers on temporarily closed UST systems shall be checked every 60 days to ensure that the equipment is operating properly, in accordance with LAC 33:XI.503.A.3.



3. Galvanic systems (e.g., anodes) on temporarily closed UST systems shall be tested every three years, in accordance with LAC 33:XI.503.A.2.

a. If the galvanic system is not tested within one year of the test due date, or if a galvanic system is not repaired within one year of failing a corrosion protection test, the UST system shall be permanently closed in accordance with LAC 33:XI.905 and 907.

4. The internal liners of internally lined underground storage tanks that are in temporary closure shall be inspected within 10 years after lining, and every five years thereafter, in accordance with LAC 33:XI.303.E.3.a.

a. If the internal liner is no longer performing in accordance with the original design specifications and cannot be repaired in accordance with a code of practice developed by a nationally-recognized organization or independent testing laboratory, or if the internal liner is not inspected within one year of the inspection due date, then the lined tank shall be permanently closed in accordance with LAC 33:XI.905 and 907.

5. Records of corrosion protection operation and maintenance shall be maintained in accordance with LAC 33:XI.503.B and 509.B.2.

B. When a UST system is temporarily closed, owners and operators shall maintain release detection in accordance with LAC 33:XI.701-705 and LAC 33:XI.Chapter 8. If a release is suspected or confirmed, the UST owner or operator shall comply with LAC 33:XI.707-715. Release detection and the release detection operation and maintenance testing and inspections listed in LAC 33:XI.511, 513, and 703.A.2.d are not required as long as the UST system is empty. A UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (1 inch) of product or 0.3 percent by weight of the total capacity of the UST system, whichever is less, remains in the UST system. In addition, spill and overfill operation and maintenance testing and inspections listed in LAC 33:XI.511 is not required.

C. When a UST system is temporarily closed for three months or more, owners and operators shall also comply with the following requirements:

1. leave vent lines open and functioning;
2. cap and secure all other lines, pumps, manways, and ancillary equipment; and
3. submit a completed copy of the UST-REG form to the department, indicating the date that the UST system was temporarily closed.

D. When a UST system is temporarily closed for more than six months, owners and operators shall permanently close the UST system if it does not meet either the performance standards in LAC 33:XI.303.B, C, or D for new UST systems or the upgrading requirements in LAC 33:XI.303.E.3-7, except that the spill and overfill equipment requirements do not have to be met.

E. When all of the UST systems located in the same tank hold at a facility are temporarily closed for more than 24 months, owners and operators shall complete a site assessment in accordance with the guidelines established by the department and LAC 33:XI.907. The results of the assessment and documentation of compliance with the

temporary closure requirements in Subsection A of this Section shall be submitted in duplicate to the Office of Environmental Assessment within 60 days following the end of the 24-month temporary closure period.

1. The department may waive the site assessment requirement if the UST system is placed into service after receiving notification from the department to conduct the site assessment if the UST system passes tank and line tightness testing.

2. The 24-month site assessment is not required if a temporarily closed UST system contains product and release detection, in accordance with LAC 33:XI.701-705 and LAC 33:XI.Chapter 8, is conducted on the tank during the entire period that the UST system is temporarily closed. If release detection ceases, the 24-month site assessment shall be conducted within two years of cessation of release detection.

3. The department may grant a two year extension to the temporary closure site assessment requirement upon receiving a written request from the UST owner or operator. The written request shall provide justification for the extension and documentation that all corrosion protection equipment is operated and maintained in accordance with Subsection A of this Section. If the UST system is returned to service prior to the end of the two year extension period, a 24-month temporary closure site assessment is not required.

4. Upon permanent closure of a UST system, the 24-month temporary closure site assessment may be used to satisfy the UST closure sampling requirements specified in LAC 33:XI.907 at the discretion of the department, provided that the UST system remained empty of regulated substances from the time of the temporary closure site assessment until the time of permanent closure.

F. A tank tightness test conducted in accordance with LAC 33:XI.701.A.3, a line tightness test conducted in accordance with LAC 33:XI.701.B.2, and a line leak detector test conducted in accordance with LAC 33:XI.701.B.1 shall be conducted within five days after a UST system that has been temporarily closed for three months or more is brought back into service.

G. Within 30 days after a UST system is placed back into service, an updated UST-REG form shall be submitted to the department identifying the date that the UST system was placed back into service.

H. Release detection operation and maintenance testing and inspections listed in LAC 33:XI.511, 513, and 703.A.2.d are due within 30 days of placing the UST system back into service, or within the required timeframe of the last test conducted as required by LAC 33:XI.511, 513, and 701.A.2.d, whichever is later.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1074 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2520 (October 2005), LR 33:2173 (October 2007), LR 34:2120 (October 2008), amended by the Office of the Secretary, Legal Division, LR 38:2762 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2144 (November 2017), LR 44:1618 (September 20, 2018).

### **§905. Permanent Closure and Changes-in-Service**

A. At least 30 days before beginning either permanent closure or a change-in-service under Subsections B, C, and D of this Section, owners and operators shall notify the Office of Environmental Assessment of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action.

1. UST owner shall submit a completed UST-SURV-01 form.

2. UST owner and/or certified worker(s) responsible for the closure critical junctures shall notify the appropriate regional office of the Office of Environmental Assessment by phone, mail, email, fax, or online (when available) at least seven days prior to implementing the permanent closure or change-in-service and prior to commencing any *closure-critical junctures*, as defined in LAC 33:XI.1303.

3. Beginning January 20, 1992, all owners and operators shall ensure that an individual exercising supervisory control over *closure-critical junctures* (as defined in LAC 33:XI.1303) is certified in accordance with LAC 33:XI.Chapter 13. The assessment of the excavation zone required under LAC 33:XI.907 shall be performed after the department is notified but before the permanent closure or change-in-service is completed.

B. To permanently close a UST, owners and operators shall empty and clean the tank and all associated piping by removing all liquids and accumulated sludges. All tanks taken out of service permanently shall also be either removed from the ground, filled with an inert solid material, or closed in a manner approved by the department. All piping taken permanently out of service shall be removed from the ground, filled with an inert solid material, rendered inoperable, or closed in a manner approved by the department. Single-walled piping that was attached to a tank that is undergoing permanent closure or a change-in-service cannot be reused to convey regulated substances.

C. Continued use of a UST system to store a nonregulated substance is considered a change-in-service. Before a change-in-service, owners and operators shall empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with LAC 33:XI.907.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2560 (November 2000), amended by the Office of Environmental Assessment, LR 31:1074 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2173 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2763 (November 2012), repromulgated LR 39:85 (January 2013), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2145 (November 2017), LR 44:1620 (September 20, 2018).

### **§907. Assessing the Site at Closure or Change-in-Service**

A. Before permanent closure or a change-in-service is completed, owners and operators shall measure for the presence of a release where contamination is most likely to

be present at the UST site, in accordance with the guidelines established by the department. In selecting sample types, sample locations, and measurement methods, owners and operators shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release. Within 60 days following permanent closure or change-in-service, the UST owner shall submit the following to the Office of Environmental Assessment:

1. a completed underground storage tank closure/assessment form (UST-SURV-02); and

2. results of the closure assessment (e.g., closure assessment report).

a. The assessment results (e.g., closure assessment report) shall include a site diagram indicating locations where samples were collected, laboratory analytical results table, laboratory analytical report and chain of custody, manifests, and conveyance notice if applicable, in accordance with the guidelines established by the department.

B. If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered through the methods described in Subsection A of this Section, or in any other manner, owners and operators shall begin corrective action in accordance with LAC 33:XI.715.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2560 (November 2000), amended by the Office of Environmental Assessment, LR 31:1074 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2173 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2763 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2145 (November 2017), LR 44:1620 (September 20, 2018).

## **Chapter 11. Financial Responsibility**

### **§1101. Applicability**

A. This Chapter applies to owners and operators of all petroleum or motor fuel underground storage tank (UST) systems except as otherwise provided in this Section.

B. Owners and operators of petroleum or motor fuel UST systems are subject to these requirements in accordance with LAC 33:XI.1103.

C. ...

D. The requirements of this Chapter do not apply to owners and operators of any UST system described in LAC 33:XI.101.B and 101.C.1.a, b, and c.

E. If the owner and operator of a petroleum or motor fuel underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1620 (September 20, 2018).

### **§1103. Compliance Dates**

A. Owners of petroleum or motor fuel underground storage tanks shall comply with the applicable requirements

of this Chapter. Previously deferred UST systems shall comply with the requirements of this Chapter according to the schedule in LAC 33:XI.801.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:729 (July 1992), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1621 (September 20, 2018).

#### **§1105. Definition of Terms**

A. When used in this Chapter, the following terms shall have the meanings given below.

*Accidental Release*—any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.

\* \* \*

*Financial Reporting Year*—the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared:

- a. a 10-K report submitted to the SEC;
- b. an annual report of tangible net worth submitted to Dun and Bradstreet; or
- c. annual reports submitted to the Energy Information Administration or the Rural Utilities Service. Financial reporting year may thus comprise a fiscal or a calendar year period.

\* \* \*

*Petroleum Marketing Firms*—Repealed.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division LR 44:1621 (September 20, 2018).

#### **§1107. Amount and Scope of Required Financial Responsibility**

A. Owners or operators of petroleum or motor fuel underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:

1. for owners or operators of petroleum or motor fuel underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum or motor fuel per month based on annual throughput for the previous calendar year, \$1,000,000; and
2. for all other owners or operators of petroleum or motor fuel underground storage tanks, \$500,000.

B. Owners or operators of petroleum or motor fuel underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum or motor fuel underground storage tanks in at least the following annual aggregate amounts:

1. for owners or operators of one to 100 petroleum or motor fuel underground storage tanks, \$1,000,000; and
2. for owners or operators of 101 or more petroleum or motor fuel underground storage tanks, \$2,000,000.

C. For the purposes of Subsections B and F of this Section only, a *petroleum or motor fuel underground storage tank* means a single containment unit and does not mean combinations of single containment units.

D. Except as provided in Subsection E of this Section, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in Subsections A and B of this Section if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

1. - 3. ...

E. If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum or motor fuel underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.

F. Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum or motor fuel underground storage tanks are acquired or installed. If the number of petroleum or motor fuel underground storage tanks for which assurance shall be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

G. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1621 (September 20, 2018).

#### **§1111. Financial Test of Self-Insurance**

A. An owner or operator, and/or guarantor, may satisfy the requirements of LAC 33:XI.1107 by passing a financial test as specified in this Section. To pass the financial test of self-insurance, the owner or operator, and/or guarantor shall meet the criteria of Subsection B or C of this Section based on year-end financial statements for the latest completed fiscal year.

B. The owner or operator, and/or guarantor, shall meet the requirements of Paragraph 1 of this Subsection below.

1. The owner or operator, and/or guarantor, shall meet the following requirements.

a. The owner or operator, and/or guarantor, shall have a tangible net worth of at least 10 times:

i. the total of the applicable aggregate amount required by LAC 33:XI.1107, based on the number of underground storage tanks for which a financial test is used to

demonstrate financial responsibility to the administrative authority under this Section;

ii. the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and the amount of liability coverage for which a financial test is used to demonstrate financial responsibility under LAC 33:V.3322, 3707, 3711, 3715, 4403, 4407, and 4411; and

iii. the sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 144.63.

b. The owner or operator, and/or guarantor, shall have a tangible net worth of at least \$10 million.

c. The owner or operator, and/or guarantor, shall have a letter signed by the chief financial officer worded as specified in Subsection D of this Section.

d. The owner or operator, and/or guarantor, shall either:

i. file financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; or

ii. report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A.

e. The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

C. The owner or operator, and/or guarantor shall meet the following requirements.

1. The owner or operator, and/or guarantor shall meet the financial test requirements of LAC 33:V.3715.F.1, substituting the appropriate amounts specified in LAC 33:XI.1107.B.1 for the "amount of liability coverage" each time specified in that Section.

2. The fiscal year-end financial statements of the owner or operator, and/or guarantor, shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

3. ...

4. The owner or operator, and/or guarantor, shall have a letter signed by the chief financial officer, worded as specified in Subsection D of this Section.

5. If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service, the owner or operator, and/or guarantor, shall obtain a special report by an independent certified public accountant stating that:

a. - b. ....

D. To demonstrate that it meets the financial test under Subsection B or C of this Section, the chief financial officer of the owner or operator, or guarantor, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded

exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted. To prepare this letter, the owner or operator shall use the form required by the department. This form may be obtained from the Office of Environmental Assessment.

#### Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s).

Underground tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If separate mechanisms or combinations of mechanisms, other than the combination of this letter and the owner's or operator's status as an eligible participant in the Underground Motor Fuels Storage Tank Trust, are being used to assure any of the tanks at any one facility, list each tank assured by this financial test by the tank identification number provided in the registration submitted pursuant to LAC 33:XI.301.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or "guarantor"] to demonstrate evidence of financial responsibility in the following amounts under the following regulations:

Regulations	Amount
Closure (LAC 33:V.3707 and 4403)	\$ _____
Post-Closure Care (LAC 33:V.3711 and 4407)	\$ _____
Liability Coverage (LAC 33:V.3715 and 4411)	\$ _____
Corrective Action (LAC 33:V.3322)	\$ _____
Plugging and Abandonment (40 CFR 144.63)	\$ _____
Closure	\$ _____
Post-Closure Care	\$ _____
Liability Coverage	\$ _____
Corrective Action	\$ _____
Plugging and Abandonment	\$ _____
Total	\$ _____

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of LAC 33:XI.1111.B.1 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of LAC 33:XI.1111.B.1 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of LAC 33:XI.1111.C are being used to demonstrate compliance with the financial test requirements.]

#### Alternative I

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee	\$ _____
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee	\$ _____
3. Sum of lines 1 and 2	\$ _____
4. Total tangible assets	\$ _____
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]	\$ _____



identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

\* \* \*

D. An owner or operator who uses a guarantee to satisfy the requirements of LAC 33:XI.1107 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the administrative authority under LAC 33:XI.1135. This standby trust fund shall meet the requirements specified in LAC 33:XI.1125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2174 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2763 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2146 (November 2017), LR 44:1623 (September 20, 2018).

#### **§1115. Insurance and Risk Retention Group Coverage**

A. ...

B. Each insurance policy shall be amended by an endorsement worded as specified in Paragraph B.1 of this Section, or evidenced by a certificate of insurance worded as specified in Paragraph B.2 of this Section, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

1. - 2. ...

\* \* \*

C. Each insurance policy shall be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1624 (September 20, 2018).

#### **§1117. Surety Bond**

A. An owner or operator may satisfy the requirements of LAC 33:XI.1107 by obtaining a surety bond that conforms to the requirements of this Section. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

##### **Performance Bond**

\* \* \*

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the Department of Environmental Quality, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally;

provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Solid Waste Disposal Act, as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above; and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

\* \* \*

C. ...

D. The owner or operator who uses a surety bond to satisfy the requirements of LAC 33:XI.1107 shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the administrative authority under LAC 33:XI.1135. This standby trust fund shall meet the requirements specified in LAC 33:XI.1125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1624 (September 20, 2018).

#### **§1119. Letter of Credit**

A. An owner or operator may satisfy the requirements of LAC 33:XI.1107 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Section. The issuing institution shall be an entity that has the authority to issue letters of credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

B. The letter of credit shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

##### **Irrevocable Standby Letter of Credit**

[Name and address of issuing institution]

[Name and address of administrative authority of the Department of Environmental Quality]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit Number \_\_\_\_\_ in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars \$[insert dollar amount], available upon presentation of:

1. your sight draft, bearing reference to this letter of credit, No. \_\_\_\_\_; and

2. your signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Solid Waste Disposal Act, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

\* \* \*

C. An owner or operator who uses a letter of credit to satisfy the requirements of LAC 33:XI.1107 shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the administrative authority will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the administrative authority under LAC 33:XI.1135. This standby trust fund shall meet the requirements specified in LAC 33:XI.1125.

D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1624 (September 20, 2018).

#### **§1121. Use of the Motor Fuels Underground Storage Tank Trust Fund**

The administrative authority was authorized by R.S. 30:2194-2195.10 to receive and administer the motor fuels underground storage tank trust fund (MFUSTTF) to provide financial responsibility for owners and/or operators of underground motor fuel storage tanks. Under the conditions described in this Section, an owner and/or operator who is eligible for participation in the MFUSTTF may use this mechanism to fulfill the financial responsibility requirements for eligible USTs. To use the MFUSTTF as a mechanism for meeting the requirements of LAC 33:XI.1107, the owner and/or operator shall be an *eligible participant* as defined in Subsection A of this Section.

A. Definitions. The following terms shall have the meanings ascribed to them as used in this Section.

\* \* \*

*Substantial Compliance*—Repealed.

\* \* \*

B. Financial Responsibility Requirements for MFUSTTF Participants

1. Unless revised by the administrative authority in accordance with R.S. 30:2195.9(A)( 5), MFUSTTF participants taking response actions shall pay the amounts required by R.S. 30:2195.9(A)(1)-(4).

2. The advisory board shall review the financial responsibility requirements on an annual basis and may recommend adjustments to the requirements to the secretary. The secretary shall determine and set the financial

responsibility requirements annually [as provided in R.S. 30:2195.9(A)(5)].

#### **3. Substitution of a Departmental Lien**

a. A lien filed by the department with the same ranking and privilege as that authorized by R.S. 30:2195(F)(2) may be substituted for the financial responsibility requirement of this Section, but in no case shall the lien be substituted on behalf of an owner and/or operator who continues to operate the system. The use of the funds in the MFUSTTF during any fiscal year on a site for which the lien, as authorized by this Section, has been used to substitute for the financial responsibility amount shall not exceed 20 percent of the amount collected in the previous fiscal year. The administrative authority is authorized to exceed the 20 percent limitation contained in this Paragraph upon recommendation by the advisory board.

b. Upon recommendation by the advisory board to exceed the 20 percent limitation as provided in Subparagraph B. 3.a of this Section, the administrative authority shall provide written notification to the environmental legislative oversight committees listing the project name, the project location, and the amount of the project that exceeds the 20 percent limitation.

C. Conditions for Use of the MFUSTTF. Funds in the MFUSTTF shall be used under the following conditions.

1. Whenever the administrative authority determines that an incidence of surface water, groundwater or soil contamination resulting from the storage of motor fuels may pose a threat to the environment or to public health, safety, or welfare, and the owner or operator of the UST system has been found to be an *eligible participant* (as defined in Subsection A of this Section), the department shall obligate monies available in the MFUSTTF to provide for the following response actions:

a. investigation and assessment of sites shown to be contaminated by a release into the surface water, groundwater or soils from an underground motor fuel storage tank;

b. interim replacement and permanent restoration of potable water supply where it has been demonstrated that the supply was contaminated by a leak from an underground motor fuel storage tank; and

c. rehabilitation and remediation of sites contaminated by a leak into the surface water, groundwater or soils from an underground motor fuel storage tank, which may consist of cleanup of affected soil, groundwater, and inland surface waters, using cost-effective methods that are technologically feasible and reliable, while ensuring adequate protection of the public health, safety and welfare, and minimizing environmental damage, in accordance with the site selection and cleanup criteria established by the department.

i. ...

ii. The monies expended from the MFUSTTF for any of the above approved costs shall be spent only up to such sum as that which is necessary to satisfy petroleum or motor fuel UST financial responsibility requirements

specified in LAC 33:XI.1107 or \$1,500,000, whichever is greater. This amount shall include any third-party claim arising from the release of motor fuels from a motor fuel underground storage tank.

2. Whenever the department has incurred costs for taking response actions with respect to the release of motor fuels from a UST system, or the department has expended funds from the MFUSTTF for response costs or third-party liability claims, the owner or operator of the underground motor fuel storage tank shall be liable to the department for such costs only if the owner or operator was not an eligible participant on the date of discharge of the motor fuels that necessitated the cleanup. Otherwise, liability is limited to the provisions contained in LAC 33:XI.1121.B. Nothing contained herein shall be construed as authorizing the expenditure from the MFUSTTF on behalf of any owner or operator of a UST system who is not an eligible participant at the time of the release for any third-party liability.

3. If the administrative authority has expended funds on behalf of an owner or operator who was not an eligible participant, and the MFUSTTF is entitled to reimbursement of those funds so expended, the administrative authority shall have the authority to, and is obligated to, use any and all administrative and judicial remedies that might be necessary for recovery of the expended funds plus legal interest from the date of payment by the administrative authority and all costs associated with the recovery of the funds.

4. ...

5. The MFUSTTF may be used to make payments to a third party who brings a third-party claim against any owner or operator of an underground motor fuel storage tank because of damages caused by a release into the surface water, groundwater, or soils and who obtains a final judgment in said action enforceable in Louisiana against the owner or operator only if it has been satisfactorily demonstrated that the owner or operator was an *eligible participant* as defined in LAC 33:XI.1121.A when the release occurred. The indemnification limit of the MFUSTTF with respect to satisfaction of third-party claims shall be that which is necessary to satisfy the requirements of LAC 33:XI.Chapter 11.

D. - D.1....

a. Payments are made in reasonable amounts to eligible participants or for reimbursement of payment to approved response action contractors for response actions when authorized by the administrative authority only after the owner or operator of the underground motor fuel storage tank or those acting for the owner or operator have paid the amount required by LAC 33:XI.1121.B.

b. ....

2. Payments are made to third parties who bring suit against the administrative authority in his or her official capacity as representative of the MFUSTTF and the owner or operator of an underground motor fuel storage tank who is an *eligible participant* as defined in Subsection A of this Section and such third party obtains a final judgment in that action enforceable in Louisiana. The owner or operator stated above shall pay the amount required by Subsection B of this Section toward the satisfaction of said judgment, and after that payment has been made, the MFUSTTF will pay the remainder of said judgment. The attorney general of the state of Louisiana is responsible for appearing in said suit for and on behalf of the administrative authority as representative of

the MFUSTTF. The administrative authority as representative of the MFUSTTF is a necessary party in any suit brought by any third party that would allow that third party to collect from the MFUSTTF, and the administrative authority shall be made a party to the initial proceedings. Payment shall be made to the third-party claimant only if the judgment is against an owner or operator who was an eligible participant on the date that the incident that gave rise to the claim occurred. The costs to the attorney general of defending these suits, or to those assistants that the administrative authority employs or the attorney general appoints to assist, shall be recovered from the MFUSTTF. If the MFUSTTF is insufficient to make payments when the claims are filed, such claims shall be paid in the order of filing when monies are paid into the MFUSTTF. Neither the amount of money in the MFUSTTF, the method of collecting it, nor any of the particulars involved in setting up the MFUSTTF shall be admissible as evidence in any trial in which suit is brought when the judgment rendered could affect the MFUSTTF.

3. For sites with more than one eligible release and/or with multiple owners and/or operators who are eligible participants, but who cannot agree on the selection of a single qualified response action contractor (RAC) for the purpose of complying with LAC 33:XI.709, 711, and 715, or who have failed to implement the requirements of LAC 33:XI.709, 711, and 715 within the time required by the administrative authority, the administrative authority shall select a RAC to carry out the requirements of LAC 33:XI.709, 711, and 715 or order the respective owners and/or operators to implement the requirements of LAC 33:XI.709, 711, and 715 without the assistance of MFUSTTF monies. In choosing a RAC, the administrative authority shall solicit notices of interest in the project from all approved RACs except those currently under contract to any of the multiple owners and/or operators of the site and then randomly select a single RAC from all RACs that have expressed an interest in the project. The RAC selected shall not be one currently under contract to any one of the multiple owners and/or operators of the site. Upon selection by the administrative authority of a single RAC, the multiple owners and/or operators shall grant property access to the RAC to comply with the requirements of LAC 33:XI.709, 711, and 715. Failure to grant property access or to impede the implementation of the requirements of LAC 33:XI.709, 711, and 715 shall result in the disallowance of reimbursement monies from the MFUSTTF. The multiple owners and/or operators shall sign and submit any and all documentation required for reimbursement from the MFUSTTF for any work that has been previously completed in accordance with LAC 33:XI.709, 711, and 715. Once the reimbursement documentation has been approved and accepted by the MFUSTTF, then all reasonable costs shall be reimbursed directly to the RAC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and specifically 2195-2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), LR 27:521 (April 2001), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 34:864 (May 2008), LR 35:1881 (September 2009), amended by the



Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1625 (September 20, 2018).

#### **§1123. Trust Fund**

A. An owner or operator may satisfy the requirements of LAC 33:XI.1107 by establishing a trust fund that conforms to the requirements of this Section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

B. The wording of the trust agreement shall be identical to the wording specified in LAC 33:XI.1125.B.1, and shall be accompanied by a formal certification of acknowledgement as specified in LAC 33:XI.1125.B.2.

C. The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2174 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2764 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2146 (November 2017), LR 44:1627 (September 20, 2018).

#### **§1125. Standby Trust Fund**

A. An owner or operator using any one of the mechanisms authorized by LAC 33:XI.1113, 1117, or 1119 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

B. The standby trust agreement shall meet the following requirements.

1. The standby trust agreement shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

##### **Trust Agreement**

\* \* \*

2. The standby trust agreement shall be accompanied by the following formal certification of acknowledgement.

\* \* \*

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1627 (September 20, 2018).

#### **§1129. Cancellation or Nonrenewal by a Provider of Financial Assurance**

A. - A.2. ...

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in LAC 33:XI.1131, the owner or operator shall

obtain alternate coverage as specified in this Section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall notify the Office of Environmental Assessment of such failure and submit:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2174 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2764 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2146 (November 2017), LR 44:1627 (September 20, 2018).

#### **§1131. Reporting by Owner or Operator**

A. An owner or operator shall submit to the Office of Environmental Assessment the appropriate forms listed in LAC 33:XI.1133.B documenting current evidence of financial responsibility as follows.

1. The owner or operator shall submit the appropriate forms within 30 days after the owner or operator identifies a release from an underground storage tank required to be reported under LAC 33:XI.713 or 715.B.

2. The owner or operator shall submit the appropriate forms if he or she fails to obtain alternate coverage as required by this Chapter, within 30 days after the owner or operator receives notice of:

a. - d. ...

3. The owner or operator shall submit the appropriate forms as required by LAC 33:XI.1111.G and 1129.B.

B. An owner or operator shall certify compliance with the financial responsibility requirements of these regulations as specified in the underground storage tank registration and technical requirements form (UST-REG) required to be submitted to the department under LAC 33:XI.301.B and C.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2521 (October 2005), LR 33:2174 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2764 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2146 (November 2017), LR 44:1627 (September 20, 2018).

#### **§1133. Recordkeeping**

A. Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this Chapter for an underground storage tank until released from the requirements of this Chapter under LAC 33:XI.1137. An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site shall be made available upon request of the department.

B. An owner or operator shall maintain the following types of evidence of financial responsibility.

1. An owner or operator using an assurance mechanism specified in LAC 33:XI.1111-1123 shall maintain a copy of the instrument worded as specified.

2. An owner or operator using a financial test or guarantee shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

3. An owner or operator using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

4. An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

5. An owner or operator covered by the Underground Motor Fuel Storage Tank Trust Fund shall maintain on file a copy of the current registration certificate.

6. An owner or operator using an assurance mechanism specified in LAC 33:XI.1111-1123 shall maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

#### **Certification of Financial Responsibility**

[Owner or operator] hereby certifies that it is in compliance with the requirements of LAC 33:XI.Chapter 11.

The financial assurance mechanism(s) used to demonstrate financial responsibility under LAC 33:XI.Chapter 11 is [are] as follows:

[  
For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage, and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

[Signature of owner or operator]

[Name of owner or operator]

[Title]

[Date]

[Signature of witness or notary]

[Name of witness or notary]

[Date]

The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1627 (September 20, 2018).

#### **§1135. Drawing on Financial Assurance Mechanisms**

A. - B.1. ...

2. The administrative authority has received one of the following.

a. The administrative authority receives certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid. The certification shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

\* \* \*

B.2.b. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1628 (September 20, 2018).

#### **§1137. Release from the Requirements**

A. An owner or operator is no longer required to maintain financial responsibility under this Chapter for an underground storage tank after the tank has been permanently closed or undergoes a change-in-service, or, if corrective action is required, after corrective action has been completed and the tank has been permanently closed or undergoes a change-in-service as required by LAC 33:XI.Chapter 9.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1628 (September 20, 2018).

#### **§1139. Bankruptcy or Other Incapacity of Owner or Operator or Provider of Financial Assurance**

A. Within 10 days after commencement of a voluntary or involuntary proceeding under title 11 (*Bankruptcy*), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the Office of Environmental Assessment by certified mail of such commencement and submit the appropriate forms listed in LAC 33:XI.1133.B documenting current financial responsibility.

B. Within 10 days after commencement of a voluntary or involuntary proceeding under title 11 (*Bankruptcy*), U.S. Code, naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in LAC 33:XI.1113.

C. An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a

suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit. The owner or operator shall obtain alternate financial assurance as specified in this Chapter within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he shall notify the Office of Environmental Assessment.

D. Within 30 days after receipt of notification that the motor fuels underground storage tank trust fund (MFUSTTF) has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator shall obtain alternate financial assurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), amended by the Office of Environmental Assessment, LR 31:1578 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2174 (October 2007), LR 34:1902 (September 2008), amended by the Office of the Secretary, Legal Division, LR 38:2764 (November 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2146 (November 2017), LR 44:1628 (September 20, 2018).

## **Chapter 12. Requirements for Response Action Contractors Who Assess and Remediate Motor Fuel Contaminated Sites Eligible for Cost Reimbursement in Accordance with the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF)**

### **§1201. Scope**

A. ...

B. Effective July 15, 1988, the tank trust fund required that response action contractors (RACs) be approved by the department. Any RAC performing UST site work due to a release eligible for tank trust fund participation shall meet standards approved by the department, and its name shall appear on the RAC list maintained by the department. Only RACs appearing on the list at the time the work was performed are eligible for reimbursement from the TTF.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194(C) and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:522 (April 2001), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1629 (September 20, 2018).

### **§1203. Prohibitions**

A. ...

B. Persons performing *technical services*, as defined in LAC 33:XI.103, shall be RACs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194(C) and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:522 (April 2001),

amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1629 (September 20, 2018).

### **§1205. Qualifications**

A. In order to be listed by the department as an approved RAC for work that is eligible for tank trust fund reimbursement, persons shall submit, on a department-prescribed application form, documentation demonstrating and verifying that they meet the following minimum requirements:

1. the applicant shall be licensed by the state of Louisiana Licensing Board for Contractors with a specialty compatible with UST assessment/remedial activities. A copy of the valid, unexpired license shall be provided in the name of the applicant to be placed on the RAC list;

2. the applicant shall have a minimum of \$1,000,000 of contractor's general liability insurance and a minimum of \$1,000,000 of coverage for an accidental and/or unexpected release(s) from a UST system(s) and/or any other accidental releases related to site-specific RAC activities. A valid, unexpired copy of the certificates of insurance coverage must be provided in the name of the applicant to be placed on the RAC list and with the department listed as an additional insured. Certificate of insurance shall provide that the insurer shall give 30 days notice of cancellation to all insured;

3. the applicant's employees shall comply with applicable Occupational Safety and Health Administration (OSHA) training and certification requirements. A written statement indicating compliance shall be provided;

4. the applicant shall have on staff, either a registered engineer, licensed in the state of Louisiana, with expertise in geotechnical engineering and hydrogeology or a geologist with expertise in these fields. A copy of the current engineering registration or the college transcripts for the geologists shall be provided;

5. the applicant shall sign a certification statement certifying that the RAC will not accept an authorization for work from an eligible tank trust fund participant if the RAC cannot begin work within 72 hours of authorization. The certification shall include a commitment that the RAC will retain documentation demonstrating compliance with this requirement; and

6. the applicant shall provide a job history and adequately demonstrate relevant experience in environmental subsurface investigation and remediation at sites exhibiting subsurface motor fuels contamination. A minimum of five jobs shall be documented, and the applicant shall adequately demonstrate the following:

A.6.a. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194(C) and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:523 (April 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2174 (October 2007), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1629 (September 20, 2018).

## **Chapter 13. Certification Requirements for Persons Who Install, Repair, or Close Underground Storage Tank Systems**

### **§1303. Definitions**

A. The terms defined in this Section shall have the following meanings in this Chapter.

\* \* \*

*Closure-Critical Juncture*—those steps in the UST system closure process that are crucial to the prevention or detection of releases from that system. These steps are:

- a. ...
- b. all subsurface sample collection events, unless a response action contractor approved by the department under LAC 33:XI.Chapter 12 is present and is exercising responsible supervisory control of sample collection events; and
- c. ...

\* \* \*

*Install*—the process of placing a UST system in the ground and preparing it to be put into service and the process of renovating an existing site (i.e., replacing product piping, adding new product piping, and installing new containment sumps).

*Installation-Critical Juncture*—those steps during the installation of a UST system that are crucial to the prevention or detection of releases from that system. These steps are:

- a. - d. ...
- e. completion of the backfill and filling of the excavation;
- f. installation of release detection devices within the excavation zone;
- g. installation of containment sumps; and
- h. installation of spill and overflow prevention equipment.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1075 (May 2005), amended by the Office of the Secretary Legal Affairs and Criminal Investigations Division, LR 44:1630 (September 20, 2018).

### **§1305. Categories of Certification and Requirements for Issuance and Renewal of Certificates**

A. - A.2. ...

B. Requirements for Certification Examination

1. To qualify for an examination, a person need not be a resident of Louisiana. A person shall provide, to the Office of Environmental Assessment, payment of the examination fee and meet the following requirements to be eligible for a UST certification examination.

a. Any person who applies for a certificate addressing UST system installation/repair shall demonstrate:

i. - ii. ...

b. Any person who applies for a certificate addressing UST system closure shall demonstrate:

b.i. - c. ...

i. a civil, environmental, or mechanical engineering degree from a recognized college or university; or

B.1.c.ii. - F. ...

1. All UST certificates and certificate renewals shall expire December 31 of every second year. Applications for certificate renewal and payment of the renewal fee should be submitted to the Office of Management and Finance by November 1 of each year they expire. A person whose certificate has expired prior to his or her submission of

evidence of compliance with Paragraph F.2 of this Section shall be considered a new applicant for certification.

F.2. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), LR 29:691 (May 2003), LR 29:2052 (October 2003), amended by the Office of Environmental Assessment, LR 30:2804 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2175 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2764 (November 2012), LR 43:951 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2147 (November 2017), LR 44:1630 (September 20, 2018).

### **§1307. Certification Examinations**

A. - D. ...

E. Failed Examinations. No applicant will be allowed to take an examination more than three times within a 12-month period. A new application, with applicable fees, shall be submitted each time before the new examination may be taken.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1075 (May 2005), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1630 (September 20, 2018).

### **§1309. Approval of Continuing Training Courses**

A. - A.1. ...

2. offers instruction on the most current generally acceptable technology or methods for the subjects in LAC 33:XI.1309.A.1. The technology or methods presented shall satisfy department rules, and state and federal laws governing UST system installation, repair, or closure.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2562 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2522 (October 2005), LR 33:2175 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2765 (November

2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:2147 (November 2017), LR 44:1630 (September 20, 2018).

### **§1313. UST Certification Board**

A. Composition. The administrative authority may appoint seven members of a body to be known as the UST Certification Board. Members of the board shall be as follows:

1. ...
2. a representative of the Louisiana Oil Marketers' and Convenience Store Association;
3. a representative of the Louisiana Mid-Continent Oil and Gas Association;
4. two representatives from within the certified UST contractor community; and
5. two representatives from within the UST owner community.

B. Function. The UST Certification Board is to be used on an ad hoc basis by the administrative authority. Members of the UST Certification Board shall offer technical expertise, suggestions, and other counsel to the administrative authority to assist in the planning, updating, and administration of the UST certification program. The board's activities shall, however, be advisory only, and final authority for administration of the certification program shall rest with the department.

C. Tenure and Public Identification. The normal term of office for a member of the board shall be as designated by the administrative authority. The identity, affiliation, and tenure of each board member shall be a matter of public record.

D. Meetings and Compensation. The board shall meet as determined by the administrative authority. Members of the board not otherwise employed by the state shall serve without compensation.

E. Chairman. At the first meeting of the board, members of the board shall elect a chairman from among their own number. The chairman shall serve for the duration of the ad hoc appointment, shall preside at meetings of the board, and shall be eligible for reelection.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, LR 31:1075 (May 2005), repromulgated by the Office of the Secretary, Legal Affairs Division, LR 32:394 (March 2006), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:1630 (September 20, 2018).

Herman Robinson  
General Counsel

1809#020

## **RULE**

### **Department of Public Safety and Corrections Office of State Police**

#### **Motor Vehicle Inspections (LAC 55:III.Chapter 8)**

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq., Act 138 of the 2009 Regular Session, and R.S. 32:1304 et seq., has amended §§803, 805, 807, 813, 815, 821, 823, and 829 which specify requirements for MVI station license renewal, outline space requirements for conducting inspections, increase requirements for inspectors, provide signage requirements, and supply additional specifications for school bus and commercial motor vehicle inspections. This Rule is hereby adopted on the day of promulgation.

#### **Title 55**

#### **PUBLIC SAFETY**

#### **Part III. Office of Motor Vehicles**

#### **Chapter 8. Motor Vehicle Inspection**

#### **Subchapter A. General**

#### **§803. Penalties for Non-Compliance (Formerly §701)**

A. - A.3. ...

4. All licensees and applicants shall be current in the payment of all penalties and fees owed to the Department of Public Safety as well as other state and/or local government agencies. Companies failing to comply with this requirement are subject to having their station's license suspended or revoked.

B. - B.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1310 and 32:1312 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 21:184 (February 1995), amended LR 38:2550 (October 2012), LR 42:428 (March 2016), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, LR 42:1531 (September 2016), amended by the Department of Public Safety and Corrections, Office of State Police, LR 44:1631 (September 2018).

#### **Subchapter B. Safety Inspections**

#### **§805. Requirements**

A. - C.2. ...

3. Any station application that is found to be falsified for any reason shall result in a denial of the station's application.

D. - D.1.b.i. ...

ii. if the building is leased, the lessee must provide a copy of the written lease agreement and keep a copy on file at the station. The lease must be at least a minimum of 12 months and include verbiage that the lessee is allowed to conduct motor vehicle inspections. Verbal leases and subleases will not be allowed;

D.1.c. - E.1.a.ii. ...

b. if the motor vehicle inspection station license has not been renewed by December 31, then starting January 1 of the following calendar year, the station must stop conducting all MVI inspections until the license has been renewed and the new license is received by the station from the MVI officer;

c. if the MVI station fails to renew their MVI license by January 31 following the expiration of their expired MVI license, then on February 1 the station license shall be revoked until the following conditions are met:

i. - ii. ...

F. Space Requirements

1. All motor vehicle inspections, including the brake check, must be conducted on the premises licensed and must be conducted on a hard solid surface (concrete or asphalt, not just concrete washout or reclaimed asphalt, etc.). A minimum of 150 feet long by 8 feet wide will be required to conduct the brake test, it will be level as well as free from major defects, and must be conducted in a safe location. Officers may reject any applicant if the station does not have the required space or the location is deemed to be unsafe to safely conduct inspections.

2. Commercial and/or School Bus Stations (only) Inspection Stall or Bay. All commercial and/or school bus stations shall be equipped with a stall or bay that is large enough to accommodate a combination tractor-trailer commercial motor vehicle of legal dimensions. Legal dimensions for a combination tractor-trailer are as follows, overall length 75ft, width 8ft 6in, and height 14ft. The stall or bay must have a roof and two permanent connecting walls. The stall or bay shall have a smooth, level, free from major defects hard surface (concrete or asphalt, not just concrete washout or reclaimed asphalt, etc.) that is able to withstand the weight of an 80,000 lbs combination tractor-trailer. A pit in the stall or bay the length of a combination tractor-trailer is encouraged, but will not be required. Combination tractor-trailers entering or leaving the inspection site shall be able to do so without repeated adjustment. An example would be the vehicle pulling into and backing out of a position to enter or leave a location, especially when it involves doing so from or onto a public roadway. A vehicle having to make multiple attempts to enter from a public roadway would cause a safety issue that affects the general motoring public and will not be allowed.

3. If an applicant requests to become both a general and commercial/school bus inspection station, it shall meet the requirements of both Paragraphs 1 and 2 of Subsection F, Space Requirements.

G. - H.1. ...

2. any changes or updates to Title 55, Public Safety (LAC 55), can be located on the Division of Administration public website: [www.doa.la.gov/Pages/osr/lac/books.aspx](http://www.doa.la.gov/Pages/osr/lac/books.aspx) All inspectors and station owners are required to check for updates twice a year or when advised to do so by the department;

3. - 7. ...

8. keep an adequate supply of all types of inspection and rejection certificates and all necessary forms on hand at all times; adequate supply shall be considered 15 certificates or more of each type;

9. perform inspections and affix certificates of inspection only in an approved bay or stall at the business location designated on the station license, affix valid certificates of inspection only to those vehicles which have been properly inspected and have passed the safety and/or emission requirements;

10. have at least one approved mechanic inspector on duty to conduct all types of inspections that are offered by that station. At a minimum these inspections will be conducted during the hours listed by a station for each normal business day;

11. ...

a. if a station is required to close or there is not an inspector on-duty for any reason during its posted hours, the station owner or operator must notify the MVI Section by phone, fax or e-mail before closing or ceasing inspections. The station will also post a notice of closure on a main door or in a main window that the station is closed or that an inspector is not available. The notice will include the date and approximate time it will reopen or the inspector will be available;

12. - 13. ...

14. immediately follow all directives and instructions issued by the department;

15. properly inform all employees of the rules and regulations set forth herein. Continued supervision of all mechanics authorized to inspect motor vehicles must be maintained; and

H.16. - I.2. ...

a. any felony conviction within ten years of application, unless the felony is a crime of violence, a felony is defined by R.S. 14:2(A)(4);

b. a felony conviction for an offense related to the operation of a motor vehicle within five years of application, unless the felony is a crime of violence;

c. any felony conviction as defined by R.S. 14:2(B) as a crime of violence;

d. any person who is registered as a sex offender or a child predator;

e. any new mechanic's application that is found to be falsified for any reason shall result in a denial of the individual applying. The denial period is at the discretion of the department;

f. any existing mechanic inspector who is convicted of a felony while licensed will be suspended or revoked in accordance with the above Subparagraphs a-e of this Paragraph;

g. if an existing mechanic inspector has been arrested for a felony, he will be suspended until the charges have been adjudicated. In the event there is only inspector licensed to conduct inspections, the station will also be suspended. Before the suspension is lifted, the inspector will provide the department with official certified court documents that show the inspector has been cleared of all felony charges;

h. if an existing mechanic inspector does not have a current certification/accreditation he shall be suspended until the certification/accreditation is again current.

3. - 7. ...

8. Commercial and/or School Bus Stations. The following requirements shall be met by each applicant prior to being approved as a mechanic inspector for stations that are authorized as commercial and/or school bus:

a. shall meet the same requirements outlined in Subsection I of this Section, except as stated here in;

b. shall be a current ASE (automotive service excellence) certified diesel mechanic or have an equivalent accreditation. Proof shall be provided to the department for review that the mechanic is currently certified and again after every reaccreditation period has been renewed, depending on the type of certification. Proof of current ASE certification or an equivalent type accreditation shall be kept on file at each inspection location for each inspector, for department review. The department has the right to deny a mechanic's application due to the type of certification/accreditation. Denial by the department will take place if it believes the type of certification/accreditation to be less than the current industry standards, as determined by the department;

c. shall have at least five years of experience as an ASE certified diesel mechanic or an equivalent accreditation. The mechanic shall provide proof of such experience and certification to the department for review. Proof shall be kept on file at each inspection location for each inspector, for department review.

NOTE: for this section an accredited diesel mechanic will have, but not be limited to, auto maintenance and light repair, engine repair, manual drive train and axles, suspension and steering, brakes, light vehicle diesel engines, and diesel engines certifications. In addition for School Bus inspectors, accreditations must include the same areas as above and include School Bus certifications.

J. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304-1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2422 (December 1999), amended LR 27:2260 (December 2001), repromulgated LR 28:344 (February 2002), amended by the Department of Public Safety and Corrections, Office of State Police, LR 38:2550 (October 2012), LR 42:429 (March 2016), LR 44:1631 (September 2018).

#### **§807. Operation as an Official Motor Vehicle Inspection Station**

A. - A.1. ...

2. The new location or owner shall meet all requirements under §805.D and F of this Chapter (minimum requirements for a motor vehicle inspection station and space requirements).

B. - C. ...

1. All public motor vehicle inspection stations will be required to display an official motor vehicle inspection sign that must conform to the examples listed herein. The sign shall contain the following language: "Official Motor Vehicle Inspection Station" and shall display the state of Louisiana official seal, with a solid border around the outer perimeter of the sign. The language and state seal shall be displayed as per the pictured example listed as 1. The background of the sign must be orange in color, specifically traffic cone orange (Hex color code value - FF7221 = RGB color code value - 255,114,33). Any language, the state seal, and the border must be black in color. The part of the sign that contains the official language, the state seal, and the border must measure at minimum 18 inches wide by 24 inches high. Any language must be a minimum of 3 inches in

height. Any language must be in the font style of "Haettenschweiler". The sign must be displayed in such a manner as to be easily seen and readily distinguishable as an official motor vehicle inspection station by the general motoring public.

#### **2. Display of Inspection Hours and Prices**

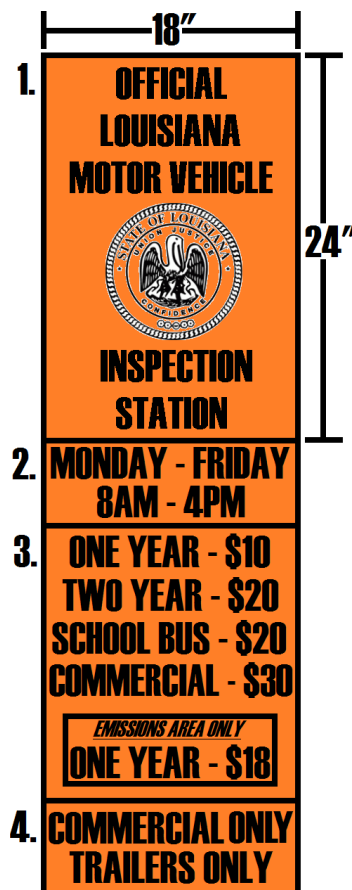
a. The days and hours of operation shall be displayed on the official MVI sign. The days and hours shall be displayed as per the pictured example listed as 2. (See Subparagraph 3.a. of this Subsection.)

b. The price of all relevant inspections conducted by a station shall be displayed on the official MVI sign. (i.e. emissions, commercial, school buses, etc.) If the station conducts emission inspections, it shall also display the price of such inspections. The prices shall be displayed as per the pictured example listed as 3. (See Subparagraph 3.a. of this Subsection.)

c. Inspection hours and prices shall be displayed either above or below the official MVI sign in the same manner listed in Subsection C.1. of this Section (i.e. color, size, font etc.).

3. If the inspection station is restricted to a certain class of vehicle, another section shall be added to the official Motor Vehicle Inspection sign designating which vehicles are to be inspected. Stations authorized to inspect commercial vehicles and/or school buses must display a sign stating this. Additional sections shall be displayed either above or below the official MVI sign in the same manner listed in Subsection C.1. of this Section (i.e. color, size, font etc.) as per the pictured example listed as 4.

#### **a. Official Motor Vehicle Inspection Sign Examples**



D. - D.1.b. ...

c. Vehicles that are registered inside the non-attainment area and/or vehicles that are registered outside the non-attainment area that are presented for inspection in the non-attainment area that fall within the guidelines of LAC 55:III.817.B shall be issued a one-year certificate only and be assessed an \$18 inspection fee.

i. Cars, light duty trucks, and trailers registered or inspected in the non-attainment area that do not meet the criteria for the enhanced emission testing as stated in LAC 55:III.817.B can at the owners discretion be issued a one- or two-year certificate as stated in Subparagraph D.1.a of this Section.

2. - 6. ...

E. R.S. 32:1306(G) Place of Inspection

1. Notwithstanding any law, rule or administrative policy to the contrary, official MVI stations shall not be required to reserve a service bay or stall for the exclusive purpose of conducting motor vehicle inspections, but such stall or bay must be cleared and available within 20 minutes from the time an inspection is requested.

2. Mechanic inspectors shall only conduct motor vehicle inspections within a bay or stall that has been approved by the department. Mechanic inspectors shall only conduct braking tests on an area 150 feet long by 8 feet wide that has been approved by the department as a brake test area.

3. Inspection and rejection certificates shall be issued to a vehicle only by an authorized, licensed mechanic inspector. This will only be done within a bay or stall that has been approved by the department at an authorized inspection station.

F. - F.1. ...

2. Demands for inspection or rejection certificates should be anticipated before the station's supply is depleted. Every motor vehicle inspection station will be required to have 15 of each type certificates or more on hand at all times. (Example: one and two year general, as well as commercial certificates if applicable)

F.3. - H. ...

I. Motor Vehicle Inspection Log Report

1. All entries must be legible and made in ink only. The audit number of the inspection or rejection certificates issued must be listed in numerical order and must be shown on the report. All other required information must be provided for the vehicle inspected. Vehicle information will be obtained from the registration. The operator's license number must be taken from the driver's license of the person presenting the vehicle for inspection and not from the registration. In addition to the foregoing all blanks on any log sheets will include all related information. Examples include information related to each station, dates of each week, mechanic inspector(s) name, signatures with date, inspection totals, etc.

1.a. - 6.a. ...

7. Official motor vehicle inspection stations can obtain copies of the log sheets from the Louisiana State Police website at [www.lsp.org](http://www.lsp.org). Weekly and Commercial forms must be printed on legal size paper (14" wide X 8.5" high). School bus forms may be printed on letter size paper (11" high X 8.5" wide). Copies of log sheets may be made, but they must be made from current state issued log sheet and contain the same information, in the same order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304-1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2424 (December 1999), amended 27:2260 (December 2001), repromulgated LR 28:345 (February 2002), amended LR 30:2859 (December 2004), amended by the Department of Public Safety and Corrections, Office of State Police, LR 38:2552 (October 2012), LR 42:433 (March 2016), LR 44:1633 (September 2018).

### **§813. Required Equipment**

A. - D. ...

1. Every vehicle required to be equipped with brakes must be tested by conducting a braking test on the approved brake test area. The mechanic inspector shall take physical control of the vehicle presented for inspection to determine if the brakes are operating correctly, except motorcycles.

2. The test for stopping distance shall be made on a substantially level, smooth, hard surface that is free from loose material and is at least 150 feet in length by 8 feet wide. The vehicle shall not pull to the right or the left causing the vehicle to excessively alter its direction of travel.

3. A platform brake tester may be used instead of performing the braking test. Before attempting to inspect a vehicle's brakes with a platform brake tester, the mechanic inspector shall be trained on and have experience in the use of the machine. The machine shall have adequate capacity and shall be calibrated and certified yearly. The mechanic inspector shall follow all tester manufacturers' directions.

D.4. - AA.2. ...

a. With the front wheels in a straight-ahead position, check steering for free play. The engine must be running to check the free play in the power steering. More than 2 inches of free play for power-assisted steering and more than 3 inches of free play for manual steering will not be permitted. This shall be conducted during the braking test.

AA.3. - KK.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304-1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2428 (December 1999), amended LR 28:345 (February 2002), amended by the Department of Public Safety and Corrections, Office of State Police, LR 36:1789 (August 2010), LR 38:2553 (October 2012), LR 42:435 (March 2016), LR 44:1634 (September 2018).

### **§815. Miscellaneous Inspection Procedures**

A. Trailers (must comply with requirements of LAC 55:III.811 and 813 where applicable)

1. - 4. ...

5. Exemptions. Single axle two-wheel trailers, tandem axle trailers, and all boat trailers are exempt from the MVI requirements (unless these trailers are used in commerce and are subject to 49 CFR 396.17-23 of the Federal Motor Carrier Safety Administration regulations).

B. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304-1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2433 (December 1999), amended by the Department of Public Safety and Corrections, Office of State Police, LR 42:438 (March 2016), LR 44:1634 (September 2018).

### **Subchapter D. Inspection Procedures for School Buses**

#### **§821. General Information**

A. - C.4. ...



D. All school buses presented for inspection must adhere to all safety requirements, where applicable, and must also conform to applicable Federal Motor Vehicle Safety standard (FMVSSs), Federal Motor Carrier Safety regulations, and LAC 28:CXIII, the Louisiana Department of Education Student Transportation Handbook, *Bulletin 119—Louisiana School Transportation*, Chapter 7, Vehicle Inspection and Maintenance. The bus must comply with the following items and devices in addition to all other requirements.

E. - E.3. ...

4. In addition stations and mechanic inspectors must meet all requirements in LAC 55:III.805.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304-1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2434 (December 1999), amended by the Department of Public Safety and Corrections, Office of State Police, LR 38:2557 (October 2012), LR 42:438 (March 2016), LR 44:1635 (September 2018).

**§823. General Inspection Procedures for School Busses (must comply with requirements of LAC 55:III.811 where applicable)**

A. - B.2.h. ...

i. the push rod travel must be measured (see motor carrier chart) in lieu of a braking test.

C. - Y.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304-1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2434 (December 1999), amended by the Department of Public Safety and Corrections, Office of State Police, LR 42:439 (March 2016), LR 44:1635 (September 2018).

**Subchapter E. Federal Motor Carrier Safety Regulations for Commercial Motor Vehicles (CMV)**

**§829. Minimum Periodic Inspection Standards**

A. - C.1. ...

D. Operator License. Must be valid and in the immediate possession of the vehicle operator. It must be presented to the mechanic inspector, and the license number must be taken from the driver's license and recorded in the appropriate block on the log report. (Be familiar with Paragraph D.3. of this Section.)

1. - 2. ...

3. Commercial driver's license (CDL) and non-CDL classes;

a. combination vehicle (Class A)—having a gross combination weight rating or gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or

b. heavy straight vehicle (Class B)—having a gross vehicle weight rating or gross vehicle weight of 26,001 pounds or more, whichever is greater; or

c. small vehicle (Class C) that does not meet group A or B requirements but that either:

i. is designed to transport 16 or more passengers, including the driver; or

ii. is of any size and is used in the transportation a placard-able amount of hazardous materials as defined by 49 CFR Part 172, Subpart F.

d. Non-CDL Chauffeur's License (Class D)—any single motor vehicle used in commerce to transport passengers or property if it has a gross vehicle weight rating of 10,001 or more pounds but less than 26,001 pounds, or any combination of vehicles used in commerce to transport passengers or property if the motor vehicle has a combined gross vehicle weight rating of 10,001 or more pounds but less than 26,001 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or any vehicle designed or utilized for the transportation of passengers for hire or fee; and not utilized in the transportation of materials found to be hazardous under the provisions of the Hazardous Materials Transportation Act which requires the vehicle to bear a placard under the provision of Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

E. - X. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1304-1310.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Safety Enforcement Section, LR 25:2438 (December 1999), amended by the Department of Public Safety and Corrections, Office of State Police, LR 38:2558 (October 2012), LR 42:442 (March 2016), LR 44:1635 (September 2018).

Lt. Col. Jason Starnes  
Chief Administrative Officer

1809#022

**RULE**

**Department of Revenue  
Policy Services Division**

Imposition of Tax; Determination of Taxable Capital;  
Newly Taxable Corporations  
(LAC: 61:I.301, 302, and 311)

Under the authority of R.S. 47:601, R.S. 47:602, and R.S. 47:611 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has amended LAC 61:I.301, 302, and 311.

The primary purpose of these amendments is to implement Act 12 of the 2016 First Extraordinary Session of the Louisiana Legislature. This Rule is hereby adopted on the day of promulgation.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 3. Corporation Franchise Tax**

**§301. Imposition of Tax**

A. General. Except as specifically exempted by R.S. 47:608, R.S. 47:601 imposes a corporation franchise tax, in addition to all other taxes levied by any other statute, on all domestic corporations, for the right granted by the laws of

this state to exist as such an organization and on both domestic and foreign corporations for the enjoyment under the protection of the laws of this state of the powers, rights, privileges, and immunities derived by reason of the corporate form of existence and operation. Liability for the tax is created whenever any such organization qualifies to do business in this state, owns or uses any part of its capital, plant, or any other property in this state, whether owned directly or indirectly by or through a partnership, joint venture, or any other business organization of which the domestic or foreign corporation is a related party as defined in R.S. 47:605.1, through the buying, selling, or procuring of services in this state, or actually does business in this state through exercising or enjoying each and every act, power, right, privilege, or immunity as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations.

1. The term *domestic corporation* shall include any of the following:

a. corporations, joint stock companies or associations, or other business organizations organized under the laws of the State of Louisiana which have privileges, powers, rights, or immunities not possessed by individuals or partnerships;

b. all entities taxed as corporations pursuant to 26 U.S.C. Subtitle A, Chapter 1, Subchapter C, for federal income tax purposes, notwithstanding any provisions of law to the contrary. Such entities will be treated and taxed in the same manner that such entities are treated and taxed for federal income tax purposes.

2. Exclusions

a. Nothing in this subsection shall extend franchise tax liability to any limited liability company qualified and eligible to be taxed in accordance with the provisions of 26 U.S.C. Subtitle A, Chapter 1, Subchapter S on the first day of its fiscal or annual year or to any other entity that was acquired before January 1, 2014, but not earlier than January 1, 2012, by an entity that was taxed pursuant to 26 U.S.C. Subtitle A, Chapter 1, Subchapter S.

b. Examples

i. Other than through its ownership in Partnership B, Corporation A is not subject to Louisiana corporation franchise tax. Corporation A owns an interest in Partnership B, which is doing business in Louisiana. Corporation A would be subject to Louisiana corporation franchise tax.

ii. Other than through its ownership in Limited Liability Company B, Corporation A is not subject to Louisiana corporation franchise tax. Corporation A owns an interest in Limited Liability Company B, which is taxed as a partnership and is doing business in Louisiana or owns property located in Louisiana. Corporation A would be subject to Louisiana corporation franchise tax.

iii. Subsidiary is a domestic corporation doing business in Louisiana and is a one hundred percent owned subsidiary of Parent. Parent is a domestic limited liability company doing business in Louisiana and elects to be taxed as an S corporation pursuant to I.R.C. § 1362 for federal income tax purposes. Subsidiary is a QSub, as provided for in I.R.C. §1361(b)(3). For Louisiana corporation franchise tax purposes, Parent would not be subject to the franchise tax, because Parent is a limited liability company, eligible to be taxed as an S corporation. Subsidiary would be subject to the franchise tax, because Subsidiary is a corporation.

B. ...

C. Thus, both domestic and foreign corporations which enjoy or exercise within this state any of the powers, privileges, or immunities granted to business corporations organized under the provisions of the Business Corporation Act, as found in R.S. 12:1-101 through 1-1704, are subject to and liable for the payment of the franchise tax imposed by this Section.

D. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:601.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:448 (March 2004), amended LR 44:1635 (September 2018).

### **§302. Determination of Taxable Capital**

A. ...

B. Holding Corporation Deduction. Any corporation which owns at least 80 percent of the capital stock of a banking corporation organized under the laws of the United States or of the state of Louisiana may deduct from its total taxable base, determined as provided in §302.A and before the allocation of taxable base to Louisiana as provided in R.S. 47:606 and R.S. 47:607, the amount by which its investment in and advances to such banking corporation exceeds the excess of total assets of the holding corporation over total taxable capital of the holding corporation, determined as provided in §302.A.

C. Any corporation, as defined in R.S. 47:601(C), that is subject to the franchise tax imposed by R.S. 47:601(A) and that is not subject to R.S. 47:602(B), (C), (D), (E), or (F), that has one or more subsidiaries, will be entitled to deduct from its taxable capital its investments in and advances to one or more subsidiaries, whether made directly or indirectly, when computing its franchise tax.

1. The term *subsidiaries* shall include any corporation, as provided for in R.S. 47:601(C), that is subject to the franchise tax imposed by R.S. 47:601(A), and in which at least 80 percent of the voting and nonvoting power of all classes of their stock, membership, partnership, or other ownership interests are owned, directly or indirectly, by a corporation subject to the franchise tax imposed by R.S. 47:601(A).

2. The amount of deduction allowed will be the sum of the amounts determined by multiplying the parent corporation's investments in and advances to each subsidiary by each subsidiary's average ratio, as determined pursuant to R.S. 47:606.

3. Any direct or indirect subsidiary of a regulated company, as provided for in R.S. 47:602(C), that directly owns at least 80 percent of the voting power of the stock, membership, partnership, or other membership interests in a *public-utility company*, as defined by the Public Utility Holding Company Act of 1935 prior to its repeal, may use the holding corporation deduction with respect to investments in and advances to subsidiary corporations or subsidiary limited liability companies to calculate its taxable capital.

4. Example. Company A is a corporation owning one hundred percent of Company B. Company B is a non-Louisiana corporation qualified to do business in Louisiana. Company B is a one hundred percent member of XYZ LLC.

XYZ LLC is an out of state limited liability company that owns property in Louisiana and has elected to be treated as a corporation pursuant to 26 U.S.C. Subtitle A, Chapter 1, Subchapter C, for federal income tax purposes. XYZ LLC would be subject to Louisiana corporation franchise tax. Company B would be subject to Louisiana corporation franchise tax as a one hundred percent member of XYZ LLC. Company A would not be subject to Louisiana corporation franchise tax. Company B would be eligible for the holding company deduction.

5. Nothing in this Subsection shall extend franchise tax liability to any limited liability company at least eighty percent owned, directly or indirectly, by any entity subject to the bank shares tax pursuant to R.S. 47:1967.

D. Public Utility Holding Corporation Deductions. Any corporation registered under the Public Utility Holding Company Act of 1935 that owns at least 80 percent of the voting power of all classes of the stock in another corporation (not including nonvoting stock which is limited and preferred as to dividends) may, after having determined its Louisiana taxable capital as provided in R.S. 47:602(A), R.S. 47:606, and R.S. 47:607, deduct therefrom the amount of investment in and advances to such corporation which was allocated to Louisiana under the provisions of R.S. 47:606(B). The only reduction for investment in and advances to subsidiaries allowed by this Subsection is with respect to those subsidiaries in which the registered public utility holding company owns at least 80 percent of all classes of stock described herein; the reduction is not allowable with respect to other subsidiaries in which the holding company owns less than 80 percent of the stock of the subsidiary, notwithstanding the fact that such investments in and advances to the subsidiary may have been attributed to Louisiana under the provisions of R.S. 47:606(B). In no case shall a reduction be allowed with respect to revenues from the subsidiary. Any repeal of the Public Utility Holding Company Act of 1935 shall not affect the entitlement to deductions under this Subsection of corporations registered under the provisions of the Public Utility Holding Company Act of 1935 prior to its repeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:602.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:449 (March 2004), amended LR 44:1636 (September 2018).

### **§311. Newly Taxable Corporations**

A. Every corporation or other entity subject to the franchise tax shall pay only the minimum tax in the first accounting period or fraction thereof in which it becomes subject to the tax. It is immaterial whether the corporation became liable for the tax on the first day or the last day of the accounting period regularly used by the taxpayer in keeping its books; the minimum tax is due for that

accounting period. The tax accrues immediately upon the corporation's becoming subject thereto.

B. - C. ...

D. Notwithstanding the provisions of this Section, the initial tax of an entity in existence and actually conducting business in Louisiana, as reflected in the definition of *doing business* found in R.S. 47:601(A)(1), during its previous calendar or fiscal year shall be calculated pursuant to R.S. 47:609, based on its corporate books on the first day of the calendar or fiscal year in which the tax levied under this Chapter becomes due and shall be payable on or before the date otherwise required by this Section.

E. For entities previously determined not subject to corporate franchise taxation under the *Utelcom, Inc.* and *Ucom, Inc. v. Bridges*, 2010-0654 (La. App. 1 Cir. 9/12/11), 77 So. 3d 39, Writ Denied 2011-2632 (La. 3/2/12), 84 So. 3d 1046 decision, such entities shall be liable for the franchise tax pursuant to R.S. 47:611(B) for the 2017 franchise tax period based on the entities' corporate books on the first day of the 2017 calendar or fiscal year.

F. Examples.

1. On February 1, 2017, one hundred fifty natural persons organized Limited Liability Company A. Limited Liability Company A is a domestic limited liability company as defined by R.S. 12:1301(A)(10). Limited Liability Company A elected to be taxed as a corporation pursuant to 26 U.S.C. Subtitle A, Chapter 1, Subchapter C for federal income tax purposes and is ineligible to make an election to be taxed in accordance with the provisions of 26 U.S.C. Subtitle A, Chapter 1, Subchapter S for federal income tax purposes because its membership exceeds one hundred members. Therefore, Limited Liability Company A must file a corporate franchise tax return and remit an initial tax of one hundred ten dollars on or before May 15, 2017.

2. Corporation A was previously determined not subject to corporate franchise taxation under the *Utelcom, Inc.* and *Ucom, Inc. v. Bridges*, 2010-0654 (La. App. 1 Cir. 9/12/11), 77 So. 3d 39, Writ Denied 2011-2632 (La. 3/2/12), 84 So. 3d 1046 decision. Corporation A, a calendar year taxpayer, holds a limited partnership interest in Partnership B. Partnership B conducts business in Louisiana in 2016 and 2017. Because of Corporation A's partnership interest in Partnership B, which conducted business in Louisiana in 2016, Corporation A is deemed to have conducted business in Louisiana in 2016 and is subject to initial franchise tax pursuant to R.S. 47:611(B) for the 2017 franchise tax period. The tax is based on Corporation A's corporate books on January 1, 2017 and is payable on or before April 15, 2017.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:611.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:469 (March 2004), amended LR 44:1637 (September 2018).

Kimberly Lewis Robinson  
Secretary

1809#028

## RULE

### Department of Revenue Policy Services Division

#### Mandatory Electronic Filing of Tax Returns and Payments (LAC 61:I.1515; LAC 61:III.Chapter 15)

Under the authority of Act 150 of the 2017 Regular Session of the Louisiana Legislature, which authorizes the secretary the discretion to require electronic filing of tax returns or reports by administrative rule promulgated with legislative oversight in accordance with the Administrative Act, R.S. 47:1511, 114, 181, 201, 287.614, 300.1, 551, 609, 1061, 1519, 1520, and, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has adopted LAC 61:III.1503, 1505, 1507, 1509 and 1530 to provide mandatory electronic filing requirements for the Corporation Franchise, Corporation Income, Partnership, and Fiduciary Income (Estates and Trusts) tax returns.

The Department of Revenue has amended the Mandatory Electronic Filing of Tax Returns and Payment Rules, LAC 61:I.1515 and LAC 61:III.1501. This Rule is hereby adopted on the day of promulgation.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 15. Income: Withholding Tax

#### §1515. Withholding Tax Statements and Returns—Electronic Filing Requirements

A. Employers that are required to electronically remit withholding tax pursuant to R.S. 47:1519(B) and LAC 61:I.4910.A, shall file a separate L-1 return electronically on a quarterly basis, effective for the periods beginning after December 31, 2011.

B. Employers are required to file a transmittal of withholding tax statements, Form L-3, with copies of the employee withholding statements, Form W-2s and any information returns such as Federal Form 1099.

1. The L-3 transmittal and employee withholding statements must be filed on or before the first business day following January 31 for the preceding calendar year.

2. If a business terminates during the year, the L-3 transmittal and employee withholding statements must be filed within 30 days after the last month in which the wages were paid.

3. If the due date falls on a weekend or holiday, the report is due the next business day and becomes delinquent the following day.

C. Employers that file 50 or more employee withholding statements due on or after January 1, 2016, are required to electronically file the Form L-3, and the employee withholding statements, Form W-2s, and any information returns.

D. Electronic Filing Options. The Form L-3, and the employee withholding statements, Form W-2, and any information returns may be filed electronically as follows:

1. electronic filing using the LaWage electronic filing application via the LDR website, [www.revenue.louisiana.gov](http://www.revenue.louisiana.gov);

2. any other electronic method authorized by the secretary;

3. submissions by magnetic media including tapes and tape cartridges are no longer allowed; and

4. submissions on CDs or DVDs are no longer allowed.

E. Separate submissions must be made for each employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511, R.S. 47:1519, R.S. 47:1520 and R.S. 47:114.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Policy Services Division, LR 28:1489 (June 2002), amended LR 35:2204 (October 2009), LR 38:2382 (September 2012), amended LR 44:1638 (September 2018).

#### Part III. Administrative and Miscellaneous Provisions Chapter 15. Mandatory Electronic Filing of Tax Returns and Payment

#### §1501. Requirement for Tax Preparers to File Income Tax Returns Electronically

##### A. Definitions

*Authorized Individual Income Tax Return*—any individual tax return that can be filed electronically.

*Filed Electronically*—filing a tax return by electronic means using software that has been approved for electronic filing by the Louisiana Department of Revenue.

*Individual Income Tax Return*—any tax return required to be filed by R.S. 47:101.

*Tax Preparer*—a person or entity that prepares for compensation or employs one or more persons to prepare for compensation any Louisiana individual income tax return.

a. A tax preparer is an entity that is assigned a tax identification number and includes all of the entity's locations.

b. The combined total of the returns prepared at all of the tax preparer's locations will be used to determine whether or not the tax preparer is subject to the electronic filing mandate.

B. For returns due on or after January 1, 2012, 90 percent of the authorized individual income tax returns prepared and filed by a tax preparer that prepares and files more than 100 Louisiana individual income tax returns during any calendar year are required to be filed electronically.

C. A tax preparer that is subject to the electronic filing mandate must be accepted in the IRS e-file Program and have an electronic filer identification number (EFIN) and use software that has been approved for e-file by the Louisiana Department of Revenue.

D. Once a tax preparer is subject to the electronic filing mandate, the tax preparer must continue to e-file the required percentage of authorized individual income tax returns in future years regardless of the number of returns filed.

E. Tax Preparer Undue Hardship Waiver of Electronic Filing Requirement

1. The secretary may waive the electronic filing requirement if it is determined that complying with the requirement would cause an undue hardship.

2. For the purpose of waiver of the electronic filing requirement, inability by the tax preparer to obtain broadband access at the location where the tax returns are

prepared will be considered an undue hardship and waiver of the requirement will be granted.

F. The penalty imposed by R.S. 47:1520(B) for failure to comply with the electronic filing requirement does not apply to the requirement for tax preparers to file income tax returns electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 47:1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 33:2463 (November 2007), amended LR 34:1425 (July 2008), amended LR 44:1638 (September 2018).

### **§1503. Corporation Franchise Tax Returns—Electronic Filing Requirements**

A. Every corporation that files a Louisiana Corporation Franchise Tax Return shall be required to file the return electronically with the Department of Revenue using the electronic format prescribed by the department as follows:

1. For tax periods beginning on or after January 1, 2019, every corporation with total assets which have an absolute value equal to or greater than \$500,000 (total assets with a value equal to or greater than \$500,000 or with a value equal to or less than -\$500,000) shall file the return electronically.

2. For tax periods beginning on or after January 1, 2020, every corporation with total assets which have an absolute value equal to or greater than \$250,000 (total assets with a value equal to or greater than \$250,000 or with a value equal to or less than -\$250,000) shall file the return electronically.

3. For purposes of this Section, assets shall mean:

a. total worldwide assets of the corporation as reported on Line F of the LA CIFT 620;

b. total assets shall include both tangible and intangible assets; and

c. total assets shall be valued based upon book value which takes into account depreciation and depletion of assets.

4. Corporations required to electronically file their Louisiana Corporation Franchise Tax Return may not send paper versions of any forms to be included as part of their return.

5. This electronic filing mandate applies to corporations and preparers who file the return on a business entity's behalf.

B.1. Failure to comply with this electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

2. Waiver of the penalty provided for in paragraph 1 of this subsection shall only be allowed as provided for in R.S. 47:1520(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:609, 1511, and 1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:1639 (September 2018).

### **§1505. Corporation Income Tax Returns—Electronic Filing Requirements**

A. Every corporation that files a Louisiana Corporate Income Tax Return shall be required to file the return electronically with the Department of Revenue using the electronic format prescribed by the department as follows.

1. For tax periods beginning on or after January 1, 2018, every corporation with total assets which have an absolute value equal to or greater than \$500,000 (total assets with a value equal to or greater than \$500,000 or with a value equal to or less than -\$500,000) shall file the return electronically.

2. For tax periods beginning on or after January 1, 2019, every corporation with total assets with an absolute value equal to or greater than \$250,000 (total assets with a value equal to or greater than \$250,000 or with a value equal to or less than -\$250,000) shall file the return electronically.

3. For purposes of this Section, assets shall mean:

a. total worldwide assets of the corporation as reported on Line F of the LA CIFT 620;

b. total assets shall include both tangible and intangible assets; and

c. total assets shall be valued based upon book value which takes into account depreciation and depletion of assets.

4. Corporations required to electronically file their Louisiana corporation income tax return may not send paper versions of any forms to be included as part of their return.

5. This electronic filing mandate applies to corporations and preparers who file the return on a business entity's behalf.

B.1. Failure to comply with this electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

2. Waiver of the penalty provided for in paragraph 1 of this subsection shall only be allowed as provided for in R.S. 47:1520(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.614, 1511, and 1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:1639 (September 2018).

### **§1507. Partnership Returns—Electronic Filing Requirements**

A. Every partnership that files a Louisiana Partnership Tax Return, except for those partnerships filing composite partnership returns, shall be required to file the return electronically with the Department of Revenue using the electronic format prescribed by the department as follows:

1. For tax periods beginning on or after January 1, 2018, every partnership with total assets which have an absolute value equal to or greater than \$500,000 (total assets with a value equal to or greater than \$500,000 or with a value equal to or less than -\$500,000) shall file the return electronically.

2. For tax periods beginning on or after January 1, 2019, every partnership with total assets which have an absolute value equal to or greater than \$250,000 (total assets with a value equal to or greater than \$250,000 or with a value equal to or less than -\$250,000) shall file the return electronically.

3. For purposes of this Section, assets shall mean:

a. total worldwide assets of the partnership as reported on Line F of the form IT- 565;

b. total assets shall include both tangible and intangible assets; and

c. total assets shall be valued based upon book value which takes into account depreciation and depletion of assets.

4. Partnerships required to electronically-file their Louisiana Partnership Income Tax return may not send paper versions of any forms to be included as part of their return.

5. This electronic filing mandate applies to partnerships and preparers who file the return on a business entity's behalf.

B. 1. Failure to comply with this electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

2. Waiver of the penalty provided for in paragraph 1 of this subsection shall only be allowed as provided for in R.S. 47:1520(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:201, 1511, and 1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:1639 (September 2018).

#### **§1509. Fiduciary Income Tax Returns (Estates and Trusts)—Electronic Filing Requirements**

A. Every fiduciary that files a Louisiana Fiduciary Income Tax Return shall be required to file the return electronically with the Department of Revenue using the electronic format prescribed by the department as follows.

1. For tax periods beginning on or after January 1, 2019, every fiduciary that files a Louisiana fiduciary income tax return with more than 10 Schedules K-1 attached for taxable years beginning on or after January 1, 2019 shall file the return electronically.

2. For tax periods beginning on or after January 1, 2020, every fiduciary that files a Louisiana fiduciary income tax return with one or more Schedules K-1 attached for taxable years beginning on or after January 1, 2020 shall file the return electronically.

3. Fiduciaries required to electronically-file may not send paper versions of any forms to be included as part of their return.

B. 1. Failure to comply with this electronic filing requirement of this section will result in the assessment of a penalty as provided for in R.S. 47:1520(B).

2. Waiver of the penalty provided for in paragraph 1 of this subsection shall only be allowed as provided for in R.S. 47:1520(B).

3. If the taxpayer can prove the electronic filing of a tax return or report would create an undue hardship, the secretary may exempt the taxpayer from filing the return or report electronically.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:181, 201, 300., 1511, and 1520.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:1640 (September 2018).

#### **§1530. Telecommunication Tax for the Deaf—Electronic Payment Required**

A. R.S. 47:1519(B)(1) allows the secretary to require a local or wireless telecommunications service company operating in Louisiana to remit the tax collected for the Telecommunications for the Deaf Fund to the Department of Revenue by electronic funds transfer.

B. Effective for the third quarter of the 2018 taxable calendar and all other taxable calendar quarters thereafter, all payments by a local or wireless telecommunications service company operating in Louisiana shall be electronically transferred to the Department of Revenue on or before the thirtieth day following the close of the reporting period using the electronic format provided by the department.

C. For the purposes of this Rule, specific requirements relating to the procedures for making payments by electronic funds transfer are set forth in R.S. 47:1519 and LAC 61:I.4910.

#### **D. Failure to Timely Transfer Electronically**

1. Failure to comply with the electronic funds transfer requirements shall result in the tax payment being considered delinquent and subject to penalties and interest as provided under R.S. 47:1601 through 1602.

2. The deduction allowed by R.S. 47:1061 as compensation for collecting and remitting the tax shall not be allowed if the tax payment is not timely transmitted electronically.

E. If a taxpayer has made a good faith attempt and exercises due diligence in initiating a payment under the provisions of R.S. 47:1519, this Rule, and LAC 61:I.4910, but because of unexpected problems arising at financial institutions, Federal Reserve facilities, the automated clearinghouse system, or state agencies, the payment is not timely received, the delinquent penalty may be waived as provided by R.S. 47:1603. Before a waiver will be considered, taxpayers must furnish the department with documentation proving that due diligence was exercised and that the delay was clearly beyond their control.

F. In any case where the taxpayer can prove payment by electronic funds transfer would create an undue hardship, the secretary shall exempt the taxpayer from the requirement to transmit funds electronically.

G. A tax return or report must be filed electronically separately from the electronic transmission of the remittance. Specific requirements relating to the mandatory electronic filing of the return or report required by the Department of Revenue are set forth in LAC 61:III.1529.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1519, 47:1511, and 1061.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:1640 (September 2018).

Kimberly Lewis Robinson  
Secretary

1809#027

### **RULE**

#### **Department of Revenue Policy Services Division**

#### **Small Town Health Professionals Credit (LAC 61:I.1915)**

Under the authority of R.S. 47:297(H) and 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, has adopted LAC 61:I.1915 relative to the small town health professionals credit.

Revised Statute 47:297(H) authorizes a credit for a certified medical primary care health professional who is practicing as a physician, dentist or primary care nurse practitioner and who meets certain requirements. The secretary is authorized by R.S. 47:297(H)(5) to establish the method of allocating and reserving available tax credits to primary health care professionals for a specific time period. The purpose of this regulation is to provide the requirements and procedures for

applying for and reserving tax credits as well as the time periods applicable for claiming any tax credits so authorized. This Rule is hereby adopted on the day of promulgation.

## **Title 61**

### **REVENUE AND TAXATION**

#### **Part I. Taxes Collected and Administered by the Secretary of Revenue**

#### **Chapter 19. Miscellaneous Tax Exemptions, Credits and Deductions**

##### **§1915. Small Town Health Professionals Credit**

###### **A. General Description**

1. The small town health professionals credit provides an individual income tax credit for certified medical primary care health professionals including:

- a. physicians possessing an unrestricted license by the state of Louisiana to practice medicine;
- b. dentists licensed by the state of Louisiana to practice dentistry; or
- c. primary care nurse practitioners licensed by the state of Louisiana.

2. To be eligible for the credit, a certified medical primary care health professional must:

a. establish and maintain the primary office of their practice which is, as determined by the Department of Health through annual application:

i. for medical physicians and nurse practitioners, an area that is a primary care high needs geographic Health Professional Shortage Area (HPSA), or for dentists, a Dental Health Professional Shortage Area (DHPSA), as designated by the U.S. Department of Health and Human Services' Health Resources and Services Administration's Bureau of Health Workforce, Division of Policy and Shortage Designation (DPSD); and

ii. a rural area as defined in rules promulgated by the Department of Health (See LAC 48:I.10307 for parishes that meet the definition of rural.);

iii. accept Medicaid and Medicare payments for services rendered;

b. to be eligible for the credit, the certified medical primary care health professional must practice under the conditions set forth above for a period of not less than three tax years. In addition, the health professional must submit an annual application and receive certification from the Department of Health for each calendar year in order to claim the credit for the corresponding tax year. Under no circumstances shall a taxpayer receive the credit for more than one relocation or more than five tax years.

###### **B. Definitions.**

*Certified Medical Primary Care Health Professional*—a physician possessing an unrestricted license by the State of Louisiana to practice medicine, a dentist licensed by the State of Louisiana to practice dentistry, or a primary care nurse practitioner licensed by the State of Louisiana.

*Department of Health*—the Louisiana Department of Health

*Department of Revenue*—the Louisiana Department of Revenue

*Health Professional Shortage Area/Dental Health Professional Shortage Area*—an area so designated by the U.S. Department of Health and Human Services' Health Resources and Services Administration's Bureau of Health Workforce, Division of Policy and Shortage Designation

(DPSD) as of December 31 of the year preceding the applicable application period.

C. Application. Beginning January 1, 2018, taxpayers seeking to utilize the small town health professionals tax credit for taxable periods beginning on or after January 1, 2018 must annually apply for and be deemed eligible for the credit by the Department of Health. This annual application requirement applies to all taxpayers, including those who have previously claimed the credit within the last four years. The application period for calendar year 2018 shall begin on October 1, 2018 and conclude on November 30, 2018. For all application periods thereafter, the application period shall begin on September 1 of each calendar year and conclude on October 31 of the same calendar year. Only applications concerning eligibility for the calendar year during which the applications are received may be submitted and considered for purposes of the credit. Applications may not be submitted and will not be accepted prior or subsequent to the application period. Taxpayers must submit a Louisiana small town health professional credit application to the Department of Health for review. Each application must contain an applicant's home mailing address, date of qualifying relocation and the last four digits of the applicant's Social Security number, as well as all other required information. A taxpayer is deemed eligible upon satisfactorily demonstrating that it has met the requirements of Subsection A of this Section for the calendar year.

###### **D. Certification**

1. No later than December 31 of each calendar year, the Department of Health shall issue a tax certificate letter to the taxpayer notifying the taxpayer as to whether the application has been approved or denied. If approved, the tax certificate letter shall notify the taxpayer of the maximum amount eligible, the taxable period against which the nonrefundable credit may be used, and the time period during which the credit must be claimed. If denied, the letter shall so provide the reasons for denial. No later than January 31 of the succeeding calendar year, the Department of Health shall provide to the Department of Revenue a list of all approved applicants in a machine-sensible format, including but not limited to an Excel spreadsheet.

2. Pursuant to R.S. 47:297(H), an approved application shall authorize a taxpayer for eligibility for a nonrefundable credit with no carryforward equal to the lesser of the tax due or \$3,600, unless subject to proration, for the tax period deemed eligible. In the event the taxpayer is subject to proration due to the credit cap provisions, the taxpayer shall only be eligible for a credit equal to the pro rata amount for the tax period deemed eligible.

3. For each calendar year, beginning with calendar year 2018, the Department of Health shall not certify credits in excess of \$1,500,000. For purposes of administering the credit cap, the Department of Health shall count each approved application at a value of \$3,600 or, if subject to proration, the pro rata value. Applications shall be approved as eligible for the credit by the Department of Health on a first-come, first-served basis as determined by the postmarked or received date of a completed Louisiana small town health professional credit application. An application shall not be considered received until all information requested by the Department of Health has been submitted.

4. All applications received on the same business day shall be treated as received at the same time, and if the aggregate amount of requests received on the same business day exceeds the total amount of available tax credits, tax credits shall be approved on a pro rata basis. In such instance, applicants limited by the credit cap provisions shall be eligible for only the pro rata share of their credit.

5. The tax credit shall be earned upon approval from the Department of Health. However, in the event it is determined by the Department of Health that the taxpayer has not maintained the requirements of Subsection A of this Section, any amounts certified by the Department of Health are subject to disallowance by the Department of Revenue and any amounts allowed to offset tax, penalties or interest are subject to recapture by the Department of Revenue.

E. Credits

1. Credits certified by the Department of Health may only be used to offset tax for the taxable period deemed eligible. Any amount certified must be claimed on a return filed within the calendar year subsequent to the calendar year of application. Any credits claimed against a taxable period other than the period authorized or filed on a return before or after the calendar year which is subsequent to the calendar year of application will be disallowed.

a. Example. Application submitted and approved by the Department of Health in calendar year 2018 for credit eligibility for tax period 2018. The approved tax year 2018 credit must be claimed on a 2018 return filed during calendar year 2019.

2. For each calendar year, beginning with calendar year 2018, the Department of Revenue shall not grant credits in excess of \$1,500,000. For purposes of administering the credit cap, the Department of Revenue shall count each approved credit at the lesser of the tax due or other amount deemed eligible according to the certification issued by the Department of Health. Credits shall be granted by the Department of Revenue on a first-come, first-served basis as determined by the received date of a completed individual income tax return. A return shall not be considered received until all information requested by the Department of Revenue has been submitted.

3. All returns received on the same business day shall be treated as received at the same time, and if the aggregate amount of claims received on the same business day exceeds the total amount of available tax credits, tax credits shall be approved on a pro rata basis. In such instance, taxpayers limited by the credit cap provisions shall be eligible for only the pro rata share of their credit.

4. The provisions of this Subsection are in addition to and shall not limit the authority of the Secretary of the Department of Revenue to assess or to collect under any other provision of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:297(H) and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:1641 (September 2018).

Kimberly Lewis Robinson  
Secretary

1809#029



# Notices of Intent

## NOTICE OF INTENT

### Department of Agriculture and Forestry Office of Animal Health and Food Safety

#### Turtles (LAC 7:XXI.Chapter 19)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., notice is hereby given that the Department of Agriculture and Forestry ("Department") intends to amend LAC 7:XXI.Chapter 19 relative to turtles in Louisiana. The proposed rule change codifies Act 69 of the 2017 Regular Legislative Session related to turtle farming to include deleting certain requirements for the export of turtles, updating the requirements for licensure as a certified turtle farmer, updating the requirements for turtle farms, and updating the language on inspections. Furthermore, the proposed rule change removes certain turtle egg treatment methods that are obsolete, eliminates certain food and water inspection requirements, repeals a prohibition on the sale of eggs originating outside of Louisiana, and makes additional technical and clarifying changes.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXI. Animals and Animal Health

#### Chapter 19. Turtles

##### §1901. Definitions

A. In addition to the definitions listed below, the definitions in R.S. 3:2358.3 shall apply to these regulations.

*Agent*—an authorized representative of the Department of Agriculture and Forestry.

*Certified Laboratory*—a laboratory which has a current certification or accreditation by the Federal Food and Drug Administration or other national certifying or accrediting agency to perform microbiological or residue testing of organic or inorganic samples and has a microbiologist on staff, and has been approved by the Department of Agriculture and Forestry.

*Certified Turtle Farmer*—a Louisiana individual, partnership, corporation or entity engaged in the breeding, hatching, propagating, raising, growing, receiving, shipping, transporting, exporting, distribution or sale of farm raised turtles and which have been licensed by the Department of Agriculture and Forestry.

*Chain of Custody Form*—a document approved by the department which verifies species, destination, origin, and turtle lot and which is used for transporting turtles within the state of Louisiana only.

*Department*—the Department of Agriculture and Forestry.

*Exporter*—a person who is licensed by the U.S. Fish and Wildlife Service to engage in the business of exporting groups of turtles or groups of turtle eggs.

*Farm-Raised Turtle*—any reptile of the order Testudines which is bred, born, raised, or kept, by a licensed turtle farmer within a closed circumscribed pond for the purpose of buying, selling, or trading in commerce.

*Farmer-Exporter*—a certified turtle farmer that is also licensed by the U.S. Fish and Wildlife Service to engage in the business of exporting groups of turtles or groups of turtle eggs.

*Health Certificate*—a document which certifies that the turtles or turtle eggs are free of visible signs of infectious, contagious or communicable disease, and which is signed by a veterinarian who is licensed in this state, federally accredited and approved by the Department of Agriculture and Forestry.

*Licensed Turtle Farmer*—a person engaged in the collection, hatching, sale or distribution of farm raised turtles or turtle eggs.

*Person*—any individual, partnership, association, organization, or corporation engaged in any phase of the farm raised turtle industry.

*Quarantined Area*—any area or premises which has been designated as quarantined by the department due to a finding of contamination with *Salmonella spp.*, or other bacteria harmful to other turtles or humans by a Louisiana licensed, accredited veterinarian or agent of the department.

*Turtle Farm*—any area of land or water used to breed, raise or keep farm-raised turtles.

*Turtle Lot*—any amount of turtles or eggs up to 20,000 in number, and may be used interchangeably with the term turtle group.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), amended by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1567 (August 2000), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 31:2210 (September 2005), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:978 (May 2014), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

##### §1903. Requirements for Turtle Farms

A. Each facility which houses farm-raised turtles or turtle eggs for the purpose of buying, selling, or trading in commerce shall contain the following: turtle pond(s), turtle laying area, egg washing area, treatment areas, hatching area, holding or post-hatching area, and inventory storage.

B. Each facility shall possess hot and cold water, hand washing facilities, cooling and ventilation capability, be free of rodents and pests, be properly disinfected, utilize stainless steel or non-porous tables, buckets and baskets, and have access to restroom facilities.

C. The facility shall be free of debris, trash and offensive odors.

##### D. Egg Washing and Treatment Areas of the Facility

1. All egg washing and treatment areas shall be lighted and ventilated.

2. All floors in the egg washing and treatment areas shall consist of concrete or non-porous covering with drainage sufficient to prevent the accumulation of water.

3. All surfaces in the egg washing and treatment areas which come in contact with turtles or turtle eggs shall be non-porous.

E. Hatching, Holding, and Post-Hatching Area of the Facility

1. The hatching, holding, post-hatching area shall be a separate identifiable room in which the temperature can be maintained and controlled.

2. The hatching, holding, post-hatching area shall be large enough to accommodate all designated groups of turtles that have not been sold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1567 (August 2000), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:979 (May 2014), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

### **§1905. Inspections**

A. All persons, licensed turtle farmers, turtle farms, farmer-exporters, exporters, and certified turtle farmers are subject to inspection by agents of the Louisiana Department of Agriculture and Forestry to insure compliance with this Chapter.

B. Inspections may include but are not limited to the following actions.

1. An agent may inspect the premises of persons, turtle farms, farmer-exporters, exporters, and certified turtle farmers to insure that no turtles or eggs belonging to different groups are commingled without first receiving the documentation required by La. R.S. 3:2358.7 and §1919 of this Chapter.

2. An agent may inspect the premises of persons, turtle farms, farmer-exporters, exporters, and certified turtle farmers to insure that each turtle lot is clearly identified and is not improperly commingled with saleable or hatchable eggs of other turtle lots.

3. An agent may inspect the records of persons, turtle farms, farmer-exporters, exporters, and certified turtle farmers to verify that all documentation required by La. R.S. 3:2358.7 and §1919 of this Chapter is current.

4. An agent may take samples of water from ponds, turtles, and turtle eggs which shall be transmitted to a certified laboratory for chemical and microbiological analysis, including, but not limited to pH, antibiotic and pesticide contaminants, and potentially pathogenic bacteria.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:224 (April 1986), amended by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:350 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1568 (August 2000), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:979 (May 2014), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

### **§1907. Collection of Egg and Turtle Samples (Formerly §2305)**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2, 3:2358.9, 3:2358.10 and 3:2358.12.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:351 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1568 (August 2000), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 31:2210 (September 2005), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:980 (May 2014), repealed by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

### **§1909. Prohibitions**

A. No person may import turtles or turtle eggs of any species from any other state or foreign country unless they are a certified turtle farmer.

B. Viable turtle eggs and live turtles with a carapace length of less than four inches shall not be sold or offered for any other type of commercial or public distribution within the state of Louisiana.

1. Exceptions:

a. the sale, holding for sale, and distribution of viable turtle eggs and live turtles with a carapace length of less than four inches for bona fide scientific, educational, or exhibitional purposes, other than use as pets;

b. the sale and distribution of viable turtle eggs and live turtles with a carapace length of less than four inches to a certified turtle farmer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2 and 3:2358.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:351 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1569 (August 2000), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:980 (May 2014), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

### **§1911. Identification of Lots of Turtles and Turtle Eggs**

A. All lots of turtles or turtle eggs produced by persons in Louisiana shall be assigned a lot number on a department-approved form.

B. No turtle lot shall exceed 20,000 viable hatchlings or eggs.

C. All farm-raised turtle eggs shall originate from certified turtle farmers. They shall be identifiable by lot number.

D. All farm-raised turtles, including but not limited to turtles raised to replenish pond stock and turtles raised to a four- inch carapace length for the pet trade, shall be placed in a designated lot and remain a component of the same lot until they are sold, destroyed or removed from the facility's premises

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2 and 3:2358.7.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:351 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1569 (August

2000), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:981 (May 2014), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

#### **§1913. Microbiological Test Procedures**

A. Samples of turtles or turtle eggs may be subjected to microbiological examination using approved procedures and techniques based upon procedures used by the certified laboratory.

B. Turtle lots identified as testing positive for *Salmonella* spp. or any other microorganisms pathogenic to humans, domestic animals or aquatic species shall be reported to the Office of the State Veterinarian and the lot number verified by the Department.

C. If any turtle or turtle lot tests positive for *Salmonella* spp., then the person may request a retest. Samples of the retest must be submitted when requested by agents of the department. The person may request a retest of the lot as a whole using the same sampling procedures as used for the original test or the person may subdivide the affected positive lot into a maximum of four equal subgroups. Each such subgroup shall be separately identified, simultaneously randomly sampled and tested. The Louisiana Veterinary Medical Diagnostic Laboratory shall conduct the retesting, whether from the lot as a whole or from any of the subgroups. The Louisiana Animal Disease Diagnostic Laboratory test results, shall be the final and conclusive test results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:351 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1570 (August 2000), LR 30:1445 (July 2004), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 31:2210 (September 2005), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:981 (May 2014), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

#### **§1915. Issuance of Health Certificates (Formerly §2313)**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2, 3:2358.9 and 3:2358.10.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 17:352 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1570 (August 2000), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 31:2211 (September 2005), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:981 (May 2014), repealed by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

#### **§1917. Quarantine (Formerly §2315)**

A. Upon testing positive for *Salmonella* spp. or other pathogenic bacteria, eggs and turtles shall be subject to quarantine, inventory and verification by agents of the department.

B. Quarantined turtles and eggs shall be sealed under supervision of agents of the department to prevent the spread

of pathogenic bacteria until the person receives notice of either:

1. the lifting of the quarantine; or
2. instructions dealing with the disposal of the quarantined turtle or egg lot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2,

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:352 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1570 (August 2000), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:981 (May 2014), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

#### **§1919. Form and Content of Records**

A. All farm-raised turtles imported into this state shall be accompanied by a health certificate and meet the specific requirements of LAC 7:XXI.501.

B. Any person engaged in the breeding, hatching, propagating, raising, growing, receiving, shipping, transporting, exporting, or sale of farm raise turtles shall maintain the following applicable documentation:

1. Turtle Group Distribution Document (AHS-24-99);
2. Daily Record Keeping for Turtles and Eggs (AHS-67-01);
3. department-issued license;
4. facility inspection reports;
5. laboratory results and reports;
6. U.S. Fish and Wildlife Service Form 3-177 (for exporters only);
6. health certificates; b
8. chain of custody form.

C. All records shall be maintained for a period of three years.

D. Falsification or misrepresentation of turtle groups or lots for sampling, testing or retesting is prohibited.

E. Alteration or falsification of records of turtle groups or lots and providing records for alteration or falsification of turtle groups or lots is prohibited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2 and 3:2358.7.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:352 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1570 (August 2000), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:982 (May 2014), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

#### **§1921. Certified Turtle Farmers; Licensing**

A. No person shall breed, hatch, propagate, raise, grow, receive, ship, transport, export, or sell turtles or turtle eggs without possessing a turtle farmer license.

B. Each person applying for a turtle farmer license shall annually complete an application as provided by the department accompanied by an application fee of \$250. The application shall include the following information:

1. name of applicant;
2. date of application;
3. address of applicant;
4. telephone number of applicant;
5. whether the applicant is an individual, corporation, subchapter "S" corporation, cooperative or partnership;

6. principal officers of the applicant, if any;
7. location of applicant's principal office and farming premises;
8. location of all offices operated by applicant, along with the name of the manager and phone number of each;
9. the dates upon which the applicant begins and ends its fiscal year;

10. a map or schematic showing the location of ponds or other breeding habitats, storage, treatment and incubation buildings and facilities shall be included with all applications for a turtle farmer license. Each pond or breeding habitat shall be designated by a letter, beginning with "A", and shall be designated in sequential order and properly labeled on the map or schematic.

C. Prior to the issuance of an initial turtle farmer license, an inspection of the turtle farm facilities shall be made by an agent of the Department to insure compliance with this Chapter.

D. Upon issuance of an initial license by the department, certified turtle farmers shall be assigned a permanent licensed farmer identification code for use on all documents related to turtle farming.

E. In the case of the transfer of ownership of the person or entity that is the certified turtle farmer that person must reapply with the department for licensing as a certified turtle farmer and must meet all of the qualifications required for the issuance of an initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2 and 3:2358.4.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:352 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1571 (August 2000), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:982 (May 2014), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

### **§1923. Proper Disposal (Formerly §2321)**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2, 3:2358.9 and 3:2358.10.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 17:353 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1571 (August 2000), amended by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 31:2211 (September 2005), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:983 (May 2014), repealed by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

### **§1925. Authority of Agents to Enter Premises**

A. Agents of the department are authorized and shall be allowed entry onto any property or premises in the state of Louisiana for the purpose of carrying out the provisions of these regulations. Whenever reasonably possible, agents shall notify the person before performing any inspections.

B. Agents of the department are authorized to inspect all records and premises in order to enforce the provisions of R.S. 3:2358.1 et seq., and these regulations.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:353 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1571 (August 2000), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:983 (May 2014), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

### **§1927. Department Issued Guidelines**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:353 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1571 (August 2000), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:983 (May 2014), repealed by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

### **§1929. Penalties**

A. A penalty of not more than \$1000 may be assessed for any violation of this Chapter, by a ruling of the commissioner based on an adjudicatory hearing held in accordance with the Administrative Procedure Act. Each day on which a violation occurs shall be considered a separate offence.

B. The commissioner may deny renewal or revoke the license of a certified turtle farmer for any violation of the provisions of R.S. 3:2358.1 et seq. or for any violation of this Chapter after an adjudicatory hearing held in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2 and 3:2358.14.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 12:225 (April 1986), amended by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:353 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1572 (August 2000), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:983 (May 2014), amended by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

### **§1931. Repeal of Prior Rules and Regulations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Livestock Sanitary Board, LR 11:247 (March 1985), amended LR 11:615 (June 1985), amended by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:353 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1572 (August 2000), repromulgated by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety and the Board of Animal Health, LR 40:984 (May 2014), repealed by the Department of Agriculture and Forestry, Office of Animal Health and Food Safety, LR 44:

### **Family Impact Statement**

The proposed Rule does not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;
3. the functioning of the family;

4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

#### **Poverty Impact Statement**

The proposed Rule does not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### **Small Business Analysis**

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

#### **Provider Impact Statement**

The proposed Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments via the U.S. mail or hand delivery to John Walther, Assistant Commissioner of Animal Health and Food Safety, Department of Agriculture & Forestry, 5825 Florida Blvd., Suite 4001, Baton Rouge, LA 70806. Public comments must be received no later than 4 p.m. on October 10, 2018. No preamble is available.

Mike Strain, DVM  
Commissioner

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Turtles**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will not result in any costs or savings to state or local governmental units. The proposed rule change codifies Act 69 of the 2017 Regular Legislative Session related to turtle farming to include deleting certain requirements for the export of turtles, updating the requirements for licensure as a certified turtle farmer, updating the requirements for turtle farms, and updating the language on inspections. Furthermore, the proposed rule change removes certain turtle egg treatment methods that are obsolete, eliminates certain food and water inspection requirements, repeals a prohibition on the sale of eggs originating outside of Louisiana, and makes additional technical and clarifying changes.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will have no effect on revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will result in decreased costs for licensed turtle farmers by eliminating the requirement of egg immersion and removing certain inspection, health certification, and testing requirements.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change will allow Louisiana licensed turtle farmers to be more competitive in international markets. Current rules require a health certificate and certified laboratory report to accompany all international shipments, irrespective of whether the country of destination requires the same. Louisiana is the only state in the nation with these exit requirements in lieu of following the entry requirements for the country of destination. By eliminating these requirements, Louisiana turtle farmers will no longer be subject to this trade disadvantage.

Dane Morgan  
Assistant Commissioner  
1809#055

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Board of Elementary and Secondary Education**

Bulletin 118—Statewide Assessment Standards and Practices—Testing and Accountability (LAC 28:XI.5105)

In accordance with R.S. 17:6 and 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education has approved for advertisement proposed amendments to *Bulletin 118—Statewide Assessment Standards and Practices*. The proposed amendments align policy with Act 517 of the 2018 Regular Legislative Session, which requires the department to provide assessment results for each student who is administered the standards-based assessments in English language arts and mathematics to each public school governing authority no later than June 30 of each year.

#### **Title 28**

#### **EDUCATION**

#### **Part XI. Accountability/Testing**

#### **Subpart 3. Bulletin 118—Statewide Assessment Standards and Practices**

#### **Chapter 51. General Provisions**

#### **§5105. Testing and Accountability**

#### **[Formerly LAC 28:CXI.105]**

A. Every school shall participate in a school accountability system based on student achievement as approved by BESE.

B. All LEAs must administer all assessments according to the testing schedule dates approved by BESE.

C. The state Department of Education shall provide the assessment results for each student who is administered the standards-based assessment in English language arts and mathematics to each public school governing authority no later than June 30 of each year, with an exception given for any year in which a new assessment or significant adjustments to an existing assessment are required in order to align content standards or due to actions taken by BESE, the Division of

Administration, or the legislature. The results shall contain, but shall not be limited to, the following:

1. the scale score achieved by the student;
2. the raw score achieved by the student;
3. student performance on categories and subcategories within a given subject; and
4. longitudinal information, if available, on the student's progress in each subject area based on previous statewide standards-based assessment data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 and 17:10.1.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1526 (July 2005), amended LR 33:255 (February 2007), LR 44:462 (March 2018), LR 44:

#### **Family Impact Statement**

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

#### **Poverty Impact Statement**

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.
2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.
3. Will the proposed Rule affect employment and workforce development? No.
4. Will the proposed Rule affect taxes and tax credits? No.
5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

#### **Small Business Analysis**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency,

consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments via the U.S. Mail until 12 p.m., October 10, 2018, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand-delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Bulletin 118—Statewide Assessment Standards and Practices—Testing and Accountability**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There is no anticipated impact to the Department of Education to provide assessment results to local school districts by June 30 each year as required by Act 517 of the 2018 Regular Session. Local school districts may experience a reduction in costs as result of receiving assessment data earlier. Earlier receipt of test results will allow school districts to better allocate resources for programs, including summer remediation, targeted interventions, and student support services. This will vary by district and is indeterminable at this time.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed policy revisions.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There are no estimated effects on competition and employment as a result of the proposed revisions.

Beth Scioneaux

Evan Brasseaux

## NOTICE OF INTENT

### Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:XL.5701, 6803, and 6813)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement to revise *Bulletin 118—Statewide Assessment Standards and Practices*. The proposed policy revisions clarify policy regarding assessments and results and outline performance level cut scores for the LEAP 2025 United States History End of Course assessment.

### Title 28 EDUCATION

#### Part XI. Accountability/Testing

#### Subpart 3. Bulletin 118—Statewide Assessment Standards and Practices

#### Chapter 57. Assessment Program Overview

#### §5701. Overview of Assessment Programs in Louisiana [Formerly LAC 28:CXL.701]

A. Norm-Referenced and Criterion-Referenced Testing Programs Since 1986

Name of Assessment Program	Assessment Population	Administered
<b>Kindergarten Screening</b>		
Kindergarten Developmental Readiness Screening Program (KDRSP)	Kindergarten	fall 1987-
<b>Norm-Referenced Tests (NRTs)</b>		
California Achievement Test (CAT/F)	grades 4, 6, and 9	spring 1988-spring 1992 (no longer administered)
California Achievement Test (CAT/5)	grades 4 and 6 grade 8	spring 1993-spring 1997 spring 1997 only (no longer administered)
Iowa Tests of Basic Skills (ITBS) (form L) and Iowa Tests of Educational Development (ITED) (form M)	grades 4, 6, 8, 9, 10, and 11	spring 1998 (no longer administered)
ITBS ITED (form M)	grades 3, 5, 6, and 7 grade 9	spring 1999-spring 2002 (no longer administered)
ITBS ITED (form B)	grades 3, 5, 6, and 7 grade 9	spring 2003-spring 2005 (no longer administered)
ITBS	grade 2	spring 2012-spring 2013 (no longer administered)
<b>Criterion-Referenced Tests (CRTs)</b>		
National Assessment of Educational Progress (NAEP)	grades 4, 8, and 12	spring 1990-spring 1989-spring 1998 (no longer administered)
Louisiana Educational Assessment Program (LEAP)	grades 3, 5, and 7	

Name of Assessment Program	Assessment Population	Administered
Graduation Exit Examination ("old" GEE)	grades 10 and 11	spring 1989-spring 2003 (state administered) fall 2003-(district administered)
Louisiana Educational Assessment Program (LEAP) (ELA and Mathematics)	grades 4 and 8	spring 1999-2014
LEAP (Science and Social Studies)	grades 4 and 8	spring 2000-2016 Social Studies spring 2000-Science
LEAP 2025 (ELA, Mathematics)	grades 3-8	Spring 2015-
LEAP 2025 (Science)		Spring 2019 -
LEAP 2025 (Social Studies)	grades 3-8	Spring 2017-
Graduation Exit Examination (GEE) (ELA and Mathematics)	grade 10	spring 2001-fall 2014 (district administered)
GEE (Science and Social Studies)	grade 11	spring 2002-fall 2014 (district administered)
End-Of-Course Tests (EOCT)	Algebra I	fall 2007-summer 2017
EOCT	English II	fall 2008- summer 2017
EOCT	Geometry	fall 2009 -summer 2017
EOCT	Biology	fall 2010-spring 2018 (continued for graduating senior and retesters in 2018-2019 only)
EOCT	Applied Algebra I form	spring 2011-summer 2013
EOCT	English III	fall 2011- summer 2017 (available for students who have entered a high school cohort prior to 2017-2018 school year)
EOCT	U. S. History	fall 2012-2017 (continued for graduating seniors and retesters in 2017-2018 only)
EXPLORE	grades 8 and 9	spring 2013-2015
PLAN	grade 10	spring 2013-2015
ACT	grade 11	spring 2013-

Name of Assessment Program	Assessment Population	Administered
LEAP 2025	English I English II US History Geometry Algebra I	fall 2017-
LEAP 2025	Biology	Fall 2018-
<b>Integrated NRT/CRT</b>		
Integrated Louisiana Educational Assessment Program (iLEAP) (science and social studies)	grades 3, 5, 7	spring 2006-2017
iLEAP (ELA and math)	Grades 3, 5, 7, and 9	spring 2006-2014 (grades 3, 5, 7) spring 2006-2010 (grade 9)
<b>Special Population Assessments</b>		
LEAP Connect	Students with Individualized Education Programs (IEPs) who meet participation criteria in grades 3–11	ELA and Math Grades 3 to 8: Spring 2018- ELA and Math Grade 11: Spring 2019 -
Louisiana Alternate Assessment, Level 1 (LAA 1)	Students with Individualized Education Programs (IEPs) who meet participation criteria in grades 3–11	spring 2000-2007
LAA 1	ELA and Mathematics (grade spans 3-4; 5-6; 7-8; 9-10); Science (grades 4, 8, and 11)	Revised spring 2008-2017 (ELA and Math) (available for high school students who need to participate in 2017-2018 only) Spring 2008-present (Science)
LAA 1 ELA and Mathematics	grade 9	spring 2010-Spring 2010 (last administration of grade 9 LAA 1)
Louisiana Alternate Assessment, Level 2 (LAA 2) ELA and Mathematics (Grades 4 and 8)	grades 4, and 8	spring 2006-spring 2014 (no longer administered)
LAA 2 ELA and Mathematics (Grade 10) Science and Social Studies (Grade 11)	grades 10 and 11	spring 2006- (available for students who have entered a high school cohort in 13-14 or prior)
LAA 2 ELA and Mathematics	grades 5, 6, and 7	spring 2007-spring 2014 (no longer administered)
LAA 2 ELA and Mathematics	grade 9	spring 2010 (last state administration of grade 9 LAA 2)
LAA 2 Science and Social Studies	grades 4 and 8	spring 2008–spring 2014 (no longer administered)



Name of Assessment Program	Assessment Population	Administered
Louisiana Alternate Assessment-B (LAA-B) ["out-of-level" test]	Students with Individualized Education Programs (IEPs) who met eligibility criteria in grades 3-11.	spring 1999–spring 2003 (no longer administered)
English Language Proficiency Test (ELPT)	Limited English Proficient (LEP) students in grades K-12	Spring 2018-
English Language Development Assessment (ELDA)	Limited English Proficient (LEP) students in grades K-12	spring 2005-2017
Academic Skills Assessment (ASA) and ASA LAA 2 form	Students pursuing a State-Approved Skills Certificate (SASC) or GED	spring 2012 (one administration only, spring 2012)

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1534 (July 2005), amended LR 32:235 (February 2006), LR 34:66 (January 2008), LR 34:1352 (July 2008), LR 35:218 (February 2009), LR 36:967 (May 2010), LR 37:858 (March 2011), LR 38:34 (January 2012), LR 39:74 (January 2013), LR 39:1019 (April 2013), LR 40:1319 (July 2014), LR 40:2512 (December 2014), LR 44:465 (March 2018), LR 44:

## Chapter 68. LEAP 2025 Assessments for High School

### Subchapter A. General Provisions

#### §6803. Introduction

[Formerly LAC 28:CXI.1803]

A. - B.5. ...

#### 6. U.S. history.

NOTE: The biology 4-level end-of-course test will continue to be utilized through spring 2018; beginning in the 2018-2019 school year, student knowledge and skills of state academic standards in biology will be measured by the LEAP 2025 Biology assessment for students who are taking the course and are not graduating in 2018-2019; like US History in 2017-2018, students who are retesting and are not repeating the course, and students graduating in 2018-2019 will be allowed to complete the four-level Biology EOC for one more year. The English III end-of-course exam will continue to be available for students who entered a high school cohort in 2016-2017 or prior.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:214 (February 2009), LR 36:477 (March 2010), amended LR 38:35 (January 2012), LR 40:2514 (December 2014), LR 44:469 (March 2018), LR 44:

#### §6813. Performance Standards

[Formerly LAC 28:CXI.1813]

A. - B.5. ...

#### 6. U.S. History

U.S. History	
Achievement Level	Scaled-Score Ranges
Advanced	774-850
Mastery	750-773
Basic	725-749
Approaching Basic	711-724
Unsatisfactory	650-710

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:215 (February 2009), amended LR 36:478 (March 2010), LR 37:820 (March 2011), repromulgated LR 37:1123 (April 2011), amended LR 38:35 (January 2012), LR 39:76 (January 2013), LR 39:2444 (September 2013), LR 44:470 (March 2018), LR 44:

#### Family Impact Statement

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

#### Poverty Impact Statement

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

#### Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

### Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

### Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m., October 10, 2018, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand-delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis  
Executive Director

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

#### RULE TITLE: **Bulletin 118—Statewide Assessment Standards and Practices**

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed policy revisions clarify policy regarding assessments and results and outline performance level cut scores for the LEAP 2025 United States History End of Course assessment.

The proposed revisions will not have a fiscal impact to state or local governmental units.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed policy revisions

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment as a result of the proposed revisions.

Beth Scioneaux  
Deputy Superintendent  
1809#051

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Board of Elementary and Secondary Education

Bulletin 126—Charter Schools—Economically  
Disadvantaged (LAC 28:CXXXIX.105, 515,  
1101, 2101, 2711, and 3705)

In accordance with R.S. 17:6 and R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement amendments to *Bulletin 1706—Regulations for the Implementation of the Children with Exceptionalities Act*. The proposed amendments update terminology to refer to students as “economically disadvantaged” instead of “at-risk” in order to align the rules in the *Louisiana Administrative Code* with Act 307 of the 2018 Regular Legislative Session.

#### Title 28

#### EDUCATION

#### Part CXXXIX. Bulletin 126—Charter Schools

#### Chapter 1. General Provisions

#### §105. Purpose of Charter Schools

A. - B. ...

C. The charter school law expresses the intention of the legislature that the best interests of economically-disadvantaged pupils shall be the overriding consideration in implementing the provisions of the law.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), 17:3972, and 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1358 (July 2008), amended LR 40:1322 (July 2014), LR 44:

#### Chapter 5. Application and Approval Process for BESE-Authorized Charter Schools

#### §515. Application Components for BESE-Authorized Charter Schools

A. - D.12. ...

13. a description of the school’s instructional design, including the type of learning environment (such as classroom-based or independent study), class size and structure, curriculum overview, and teaching methods, and how that program will meet the needs of the economically-disadvantaged students to be served;

D.14. - H.11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), 17:3981, and 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1362 (July 2008), amended LR 37:869 (March 2011), LR 37:2383 (August 2011), LR 38:38 (January 2012), LR 38:750 (March 2012), repromulgated LR 38:1392 (June 2012), amended LR 38:1583 (July 2012), LR 38:3118 (December 2012), LR 39:1432 (June 2013), LR 43:2477 (December 2017), LR 44:233 (February 2018), LR 44:

#### Chapter 11. Ongoing Review of Charter Schools

#### §1101. Evaluation for BESE-Authorized Charter Schools

A. - H.7...

#### I. Organizational Performance

1. BESE shall evaluate a charter school's organizational performance based on the Department of Education's oversight and monitoring of the charter school's compliance with and performance of statutory, regulatory, reporting, and contractual obligations, including R.S.

17:3972, which provides that the best interests of economically-disadvantaged pupils shall be the overriding consideration in implementing the provisions of charter law.

2. BESE's organizational performance evaluation of each charter school shall be based on, but not limited to data and information in the following areas:

- a. special education and ELL program;
- b. student enrollment;
- c. student discipline;
- d. health and safety
- e. governance; and
- f. facilities.

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), 17:3981, and 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:871 (March 2011), repromulgated LR 37:1124 (April 2011), amended LR 37:2385 (August 2011), LR 38:751 (March 2012), repromulgated LR 38:1393 (June 2012), amended LR 38:3118 (December 2012), LR 39:1433 (June 2013), LR 39:3065 (November 2013), amended LR 40:1322 (July 2014), LR 44:235 (February 2018), LR 44:

## **Chapter 21. Charter School Governance**

### **§2101. Board of Director Composition**

A. - C. ...

D. Beginning October 1, 2018, the membership of the governing or management board of each charter school located in a parish with a population between 325,000 and 375,000 persons, based on the most recent federal decennial census, shall include at least one member who is a parent, legal guardian, or grandparent of a student enrolled in the charter school or an alumnus of the school, who may be appointed or elected.

E. Beginning with the 2019-2020 school year, at least 60 percent of the governing or management board of each charter school, other than a type 2 charter school, located in a parish with a population of between 325,000 and 375,000 persons census, shall be residents of the parish in which the charter school is located.

F. Board of Director Composition for BESE-Authorized Charter Schools

1. The board of directors of each charter operator shall consist of no fewer than seven members. Should a board have fewer than seven members due to the resignation or other loss of one or more board members, the board shall have 90 calendar days after such loss to appoint one or more replacements.

2. The board of directors of each charter operator should consist of members with a diverse set of professional skills and practical work experience in the areas of education, public/non-profit and/or for-profit administration or operations, community development, finance, and law.

3. The board of directors of each charter operator should be representative of the community in which the charter school is located and no fewer than 60 percent of its members shall reside in the community in which the charter school is located. *Community*, for the purposes of this Paragraph, shall consist of the parish in which the school is located and immediate neighboring parishes and, for type 2 charter schools, any parish that is included in the charter school's attendance zone. No fewer than 60 percent of the members of the board of directors of any charter operator that

operates multiple schools in different communities shall reside in the communities in which the charter schools are located, with equal representation from each community to the greatest extent possible.

4. The board of directors of each charter operator shall consist of no more than one person from the same immediate family, as defined by the *Code of Governmental Ethics*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1370 (July 2008), amended LR 37:873 (March 2011), LR 37:1377 (May 2011), LR 44:240 (February 2018), LR 44:

## **Chapter 27. Charter School Recruitment and Enrollment**

### **§2711. Enrollment Preferences for BESE-Authorized Charter Schools**

A. ...

B. Students previously enrolled in the charter school shall be given preference over all other applicants, and shall maintain enrollment or be automatically admitted following the charter school's application period. Students attending a pre-kindergarten or early childhood program operated by a charter school may be considered to have been previously enrolled at the charter school for the purpose of this Subsection. Requests by charter schools to give preference for students who attend a publicly-funded program at no cost to the student shall be automatically approved by the department for BESE-authorized charter schools, or the charter school's authorizer for other types of charter schools. For a charter school that requests to apply this preference for students who were admitted to a pre-kindergarten or early childhood program that utilizes admission requirements and/or charges tuition for some or all of its students, the use of the preference shall be subject to the approval of the department for BESE-authorized charter schools, or the charter school's authorizer for other types of charter schools. In such a case, the department or the charter school's authorizer, as applicable, shall require the charter school to set enrollment targets that ensure the charter school provides equity of access for economically disadvantaged applicants to its kindergarten classes.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), 17:3981, and 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:1375 (July 2008), amended LR 37:875 (March 2011), LR 39:1022 (April 2013), LR 44:243 (February 2018), LR 44:

## **Chapter 37. Virtual Charter Schools**

### **§3705. Technical Requirements for Virtual Charter Schools**

A. The following technical specifications are required for all virtual charter schools:

1. - 2. ...

3. provide each full-time student enrolled in the program who qualifies for free or reduced-price school lunches under the National School Lunch Act, is considered economically disadvantaged for the purpose of calculating funding through the Minimum Foundation Program, or does

not have a computer or internet access in his or her home with:

3.a. - 7....

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:39 (January 2012), amended LR 44:

### **Family Impact Statement**

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

### **Poverty Impact Statement**

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

### **Small Business Analysis**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the

objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments via the U.S. Mail until 12 p.m., October 10, 2018, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand-delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Bulletin 126—Charter Schools— Economically Disadvantaged**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed revisions update terminology to refer to students as “economically disadvantaged” instead of “at-risk” to align with Act 307 of the 2018 Regular Legislative Session. The proposed revisions also update policies relative to parent representation on the membership of charter school boards to align with Act 646 of the 2018 Regular Legislative Session. The proposed revisions will not have a fiscal impact to state or local governmental units.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed policy revisions.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There are no estimated effects on competition and employment as a result of the proposed revisions.

Beth Scioneaux  
Deputy Superintendent  
1809#049

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Board of Elementary and Secondary Education**

#### **Bulletin 1566—Pupil Progression Policies and Procedures— Student Placement (LAC 28:XXXIX.503)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement amendments to *Bulletin 1566—Pupil Progression Policies and Procedures*. The proposed amendments revisions provide relative to student placement in first grade and regarding the transfer of students from out-of-state schools, non-public schools, and home study programs. The revisions outline prerequisites to enrollment in first grade, and requirements for students transferring into public schools seeking to enroll in fifth and ninth grade.

#### **Title 28**

#### **EDUCATION**

#### **Part XXXIX. Bulletin 1566—Pupil Progression Policies and Procedures**

#### **Chapter 5. Placement Policies—General Requirements**

#### **§503. Regular Placement**

##### **A. - A.1.e. ...**

2. Every child, as a prerequisite to enrollment in any first grade of a public school, shall have attended at least a full-day public or non-public kindergarten for a full school year, or shall have satisfactorily passed an academic readiness screening administered by the school system prior to the time of enrollment for the first grade. Each school system shall establish the academic readiness level for its first grade based on criteria established by the system. Any child not able to meet kindergarten attendance requirements due to illness or extraordinary, extenuating circumstances as determined by the school governing authority, shall be required to satisfactorily pass an academic readiness screening administered by the school system prior to the time of enrollment for the first grade. In accordance with R.S. 17:221, any child below the age of seven who legally enrolls in school shall be subject to state laws regarding compulsory attendance and promotion requirements set forth by the school system in accordance with this bulletin.

##### **B. - D.2.a. ...**

##### **E. Transfer Students**

1. The local school board shall establish written policies for the placement of students transferring from all other systems and home schooling programs (public, nonpublic, both in and out-of-state, and foreign countries).

a. Students in grades 5 and 9 transferring to a public school from any in-state nonpublic school (state-approved and not seeking state approval), any approved home study program, or Louisiana resident transferring from any out-of-state school, shall be administered the English language arts and mathematics portions of the LEAP placement test. Students who have scored below the “basic” achievement level shall have placement and individual academic supports addressed in the same manner as non-transfer students in accordance with §701 and §703.

b. Any child transferring into the first grade of a public school from out of state and not meeting the requirements for kindergarten attendance shall be required to pass an academic readiness screening administered by the school system prior to the time of enrollment for the first grade, in accordance with state law.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17.7 and R.S. 17:24.4.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 25:2171 (November 2000), amended LR 26:1433 (July 2000), LR 26:1576 (August 2000), LR 27:188 (February 2001), LR 27:1006 (July 2001), LR 27:1682 (October 2001), LR 29:123 (February 2003), LR 30:407 (March 2004), LR 31:1974 (August 2005), LR 31:3103 (December 2005), LR 33:2063 (October 2007), LR 34:2389 (November 2008), LR 36:2003 (September 2010), LR 40:765 (April 2014), LR 40:1332 (July 2014), LR 40:2533 (December 2014), LR 41:1271 (July 2015), LR 44:480 (March 2018), LR 44:1003 (June 2018), LR 44:

#### **Family Impact Statement**

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

#### **Poverty Impact Statement**

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

#### **Small Business Analysis**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered.

It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments via the U.S. Mail until 12 p.m., October 10, 2018, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand-delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Bulletin 1566—Pupil Progression Policies and Procedures—Student Placement**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no fiscal impacts relative to the proposed policy revisions which codify current law relative to student placement in first grade and the transfer of students from out-of-state schools, non-public schools, and home study programs.

However, there will be an increase in the resource needs of local school districts to develop individual academic improvement plans for those students who score below the "basic" achievement level and who must be provided academic supports pursuant to BESE policy.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)**

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed policy revisions.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)

There are no estimated effects on competition and employment as a result of the proposed revisions.

Beth Scioneaux  
Deputy Superintendent  
1809#050

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Board of Elementary and Secondary Education**

Teaching Authorizations (LAC 28:LXXIX.123 and 125;  
CXV.501 and 504; CXXXI.311 and Chapter 9;  
CXXXIX.2107, 2903, and 2905; and CLXXI.101 and 103)

In accordance with R.S. 17:6 and 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education has approved for advertisement amendments to *Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators*; *Bulletin 741—Louisiana Handbook for School Administrators*; *Bulletin 746—Louisiana Standards for State Certification of Personnel*; *Bulletin 126—Charter Schools*; and *Bulletin 745—Louisiana Teaching Authorizations of School Personnel*. The proposed revisions align state policy with Act 634 of the 2018 Regular Legislative Session.

**Title 28**

**EDUCATION**

**Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators**

**Chapter 1. Operation and Administration**

**§123. Personnel**

A. - A.2. ...

3. The request must include the person's fingerprints in a form acceptable to the bureau.

a. Repealed.

B. - F.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:15, 17:22(6), 17:391.1-391.10, 17:411, and 17:587.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2344 (November 2003), amended LR 31:3074 (December 2005), LR 39:1439 (June 2013), LR 44:

**§125. Teaching Authorization**

A. This Section provides for the rules and regulations in accordance with the Administrative Procedure Act to establish a process for issuing a teaching authorization to a person seeking employment as an administrator, teacher, or substitute teacher in any school, including a public or nonpublic school, that does not require a Louisiana teaching certificate for the employment of a teacher.

B. Teaching authorizations shall be issued in accordance with LAC 28:CLXXI, Bulletin 745.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

**Part CXV. Bulletin 741—Louisiana Handbook for School Administrators**

**Chapter 5. Personnel**

**§501. Criminal Background Checks**

A. - A.3. ...

4. Repealed.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6, 17:15, and 17:587.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1265 (June 2005), amended LR 33:431 (March 2007), LR 34:607 (April 2008), repromulgated LR 35:443 (March 2009), amended LR 35:1473 (August 2009), LR 39:2200 (August 2013), LR 44:

**§504. Teaching Authorization**

A. This Section provides for the rules and regulations in accordance with the Administrative Procedure Act to establish a process for issuing a teaching authorization to a person seeking employment as an administrator, teacher, or substitute teacher in any school, including a public or nonpublic school that does not require a Louisiana teaching certificate for the employment of a teacher.

B. Teaching authorizations shall be issued in accordance with LAC 28:CLXXI, Bulletin 745.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

**Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel**

**Chapter 3. Teaching Authorizations and Certifications**

**Subchapter A. Standard Teaching Authorizations**

Editor's Note: The name of the Division of Student Standards and Assessments has been changed to The Division of Student Standards, Assessments, and Accountability.

**§311. World Language Certificate (WLC) PK-12**

A. - E. ...

F. A foreign language teacher in a certified foreign language immersion program who cannot be certified or issued an authorization to teach through the board's Foreign Associate Teacher Program may be allowed to teach without passing the required examination, provided the teacher has at least a baccalaureate degree and complies with state laws relative to background checks and review of criminal history.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1800 (October 2006), amended LR 33:1618 (August 2007), LR 34:233 (February 2008), LR 35:642 (April 2009), LR 36:486 (March 2010), LR 38:1952 (August 2012), LR 40:280 (February 2014), LR 43:1307 (July 2017), LR 44:745 (April 2018), LR 44:

**Chapter 9. Actions Related to the Suspension/Denial and Revocation of Louisiana Certificates**

**§903. Definitions**

A. - B.1. ...

2. those of a jurisdiction other than Louisiana which, in the judgment of the bureau employee charged with responsibility for responding to the request, would constitute

a crime under the provisions cited in this Subsection, and those under the federal criminal code having analogous elements of criminal and moral turpitude. (Federal criminal code provisions are in title 18 of U.S.C.A.) Specifically:

Crimes Reported under R.S. 15:587.1	
* * *	
*R.S. 14:81.4	Prohibited sexual conduct between educator and student
*R.S. 14:82	Prostitution
*R.S. 14:82.1	Prostitution; Persons under seventeen; Additional offenses
* * *	
R.S. 14:89.2	Crime against nature by solicitation
*R.S. 14:92	Contributing to the delinquency of juveniles
*R.S. 14:93	Cruelty to juveniles
* * *	
*Certificate issuance/reinstatement will never be considered for crimes marked with an asterisk.	

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1830 (October 2006), amended LR 34:2559 (December 2008), LR 38:763 (March 2012), LR 44:265 (February 2018), LR 44:

#### **§905. Denial of Initial or Renewal Certificates**

A. An application for a Louisiana teaching certificate or an application for the renewal of an expired Louisiana teaching certificate shall be denied if the department determines that the individual applying for the certificate has been convicted of any offense listed in R.S. 15:587.1(C) or any felony offense whatsoever or has submitted fraudulent documentation, or has participated in cheating. A person convicted of an offense as defined herein or has submitted fraudulent documentation, or has participated in cheating may apply for a certificate if the following conditions apply:

1. five years have elapsed from date of entry of final conviction, the date of entry of his plea of nolo contendere, or from the date of receipt of notification from the board of its determination that the person submitted fraudulent documentation or facilitated cheating on a state assessment;

2. the board has received a request from the person for a formal appeal and has conducted a review of the person's background and the person has provided letters of recommendation to the board.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1830 (October 2006), amended LR 44:266 (February 2018), LR 44:

#### **§906. Issuance of a Denied Certificate**

A. Issuance will never be considered for teachers who have been convicted of a felony for the following crimes:

1. R.S. 14:283, 14:30, 14:30.1, 14:31, 14:32.6, 14:32.7, 14:32.8, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.1.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:45, 14:46.2, 14:46.3, 14:46.4, 14:78, 14:78.1, 14:80, 14:80.1, 14:81, 14:81.1, 14:81.2, 14:81.3, 14:81.4, 14:82, 14:82.1, 14:84, 14:86, 14:89, 14:89.1, 14:92, 14:93, 14:93.3, 14:93.5, 14:106, 14:283, and 14:286.

B. - E.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:1999 (September 2010), amended LR 38:763 (March 2012), LR 44:266 (February 2018), LR 44:

#### **§911. Reinstatement of Suspended or Revoked Certificates**

A. Reinstatement will never be considered for teachers who have been convicted of a felony for the following crimes:

1. R.S. 14:283, 14:30, 14:30.1, 14:31, 14:32.6, 14:32.7, 14:32.8, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.1.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:45, 14:46.2, 14:46.3, 14:46.4, 14:78, 14:78.1, 14:80, 14:80.1, 14:81, 14:81.1, 14:81.2, 14:81.3, 14:81.4, 14:82, 14:82.1, 14:84, 14:86, 14:89, 14:89.1, 14:92, 14:93, 14:93.3, 14:93.5, 14:106, 14:283, and 14:286.

B. Reinstatements of certificates shall not be considered until at least five years have elapsed from the date of entry of final conviction, submission of fraudulent documentation, the date of investigation results regarding the participation in cheating, or professional license/certificate censure as noted in §905.B of this Part which resulted in certification suspension, and/or revocation.

C. - E.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), R.S. 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1831 (October 2006), amended LR 34:2560 (December 2008), LR 36:1999 (September 2010), LR 38:764 (March 2012), LR 44:268 (February 2018), LR 44:

#### **Part CXXXIX. Bulletin 126—Charter Schools Chapter 21. Charter School Governance §2107. Prohibitions**

A. - I. ...

J. A charter school shall not hire anyone:

1. as an administrator, teacher, substitute teacher, bus operator, substitute bus operator, janitor, or other school employee who might reasonably be expected to be placed in a position of supervisory or disciplinary authority over school children who has been convicted of or has pled nolo contendere to a crime listed in R.S. 15:587.1(C) unless approved in writing by a district judge of the parish and the district attorney. This statement of approval shall be kept on file at all times by the school and shall be produced upon request to any law enforcement officer;

2. as an administrator, teacher, or substitute teacher if any of the following apply to anyone who has been:

a. convicted or has pled nolo contendere to any other felony offense even if adjudication was withheld or a pardon or expungement was granted;

b. found to have submitted fraudulent documentation to the board or department as part of an application for a Louisiana teaching certificate or other teaching authorization; or

c. found to have facilitated cheating on any state assessment as determined by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), 17:3981, and 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1371 (July 2008), amended LR 37:874 (March 2011), LR 44:241 (February 2018), LR 44:



## **Chapter 29. Charter School Staff**

### **§2903. Teaching Authorizations**

A. This Section provides for the rules and regulations in accordance with the Administrative Procedure Act to establish a process for issuing a teaching authorization to anyone seeking employment as an administrator, teacher, or substitute teacher in any school, including a public or nonpublic school that does not require a Louisiana teaching certificate for the employment of a teacher.

B. Teaching authorizations shall be issued in accordance with LAC 28:CLXXI, Bulletin 745.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

### **§2905. Criminal History Review**

A. - A.2. ...

3. Repealed.

B. - D.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), 17:3981, and 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1375 (July 2008), amended LR 37:875 (March 2011), LR 39:3068 (November 2013), LR 44:245 (February 2018), LR 44:

## **Part CLXXI. Bulletin 745—Louisiana Teaching Authorizations of School Personnel**

### **Chapter 1. Teaching Authorizations**

#### **§101. Introduction**

A. This Chapter provides for rules and regulations in accordance with the Administrative Procedure Act to establish a process for issuing a teaching authorization to anyone seeking employment as an administrator, teacher, or substitute teacher in any school, including a public or nonpublic school that does not require a Louisiana teaching certificate for the employment of a teacher.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

#### **§103. Teaching Authorizations**

A. In accordance with Act 634 of the 2018 Regular Legislative Session, a teaching authorization (TA) shall be required for individuals seeking employment as an administrator, teacher, or substitute teacher in any school, including a public or nonpublic school that does not require a Louisiana teaching certificate for the employment of a teacher.

B. A TA shall be denied to anyone who has:

1. submitted fraudulent documentation to the board or the state Department of Education;
2. facilitated cheating on any state assessment administered to students; and
3. been convicted of or pled nolo contendere to a felony offense.

C. Eligibility Guideline

1. The applicant is seeking employment in a Louisiana public or nonpublic school in a role in which a Louisiana teaching certificate is not required.

D. A request for a TA must be submitted directly to the LDE by the employing school governing authority where the individual is seeking employment.

E. A TA is valid only for the period during which the individual is employed by the employing school governing authority making the initial TA request.

F. An individual seeking to change employing school systems must be issued a new TA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

### **§105. Suspension and Revocation of Teaching Authorizations for Criminal Offenses**

A. A Louisiana teaching authorization shall be suspended and revoked if the individual holding the teaching authorization has been convicted of any felony offense whatsoever. If the Louisiana teaching authorization of an individual is expired, and the individual has been convicted of a felony offense, this information shall be reported to the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse by the LDE. Such individuals will be notified per the process outlined in this Section.

B. When the department is notified that any teacher has been convicted of a specific crime:

1. departmental staff shall attempt to contact the educator to inform him/her that the department has information regarding a criminal conviction and is proceeding under this policy to suspend the teaching authorization;

2. the teacher shall have 10 days from the date of notification to provide verification that he/she has not been convicted of a criminal offense. This opportunity for response is intended as a check against mistaken identity or other incorrect information and the requested verification may be provided through a telephone conversation or written correspondence;

3. if the teacher cannot be reached or if his/her employment status cannot be determined, suspension of the authorization shall proceed, as will all other steps in the process outlined in this policy;

4. if the department determines that there is evidence that an educator has been convicted of a criminal offense, the teaching authorization issued to that educator shall be suspended. The board, the educator, and the employing school system shall be notified that the teaching authorization has been suspended pending official board action per revocation proceedings;

5. the educator shall be notified by any appropriate means of notice that his/her teaching authorization has been suspended and that the teaching authorization will be revoked unless documentation is provided verifying that he/she was not convicted of the crime. The educator shall provide copies of any documentation that verifies his/her identity and refutes the existence of a criminal conviction;

6. if the conviction upon which a teaching authorization has been suspended or revoked is reversed, such action shall be communicated to the board through documentation provided by the applicant. The board may receive such information and order reinstatement of the teaching authorization;

7. upon official action by the board, any educator whose teaching authorization has been revoked shall be notified of such action. The correspondence shall include instructions for and identification of the date when the individual may apply to the board for reinstatement of his/her teaching authorization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

#### **§107. Suspension and Revocation of Teaching**

##### **Authorizations Due to Participation in Cheating**

A. A Louisiana teaching authorization shall be suspended and revoked if the individual holding the teaching authorization has been found by the LDE to have participated in cheating, as defined in LAC 28:CXXXI.903. If the Louisiana teaching authorization of an individual has expired, and the individual has been found to have participated in cheating, this information shall be reported to the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse by the LDE. Such individuals will be notified per the process outlined in this Section.

B. When the department has determined that any teacher or administrator has been found to have participated in cheating, the following process shall take place.

1. Departmental staff shall attempt to contact the teacher or administrator with notification that the department has information regarding his/her participation in cheating and is proceeding under this policy to suspend the teaching authorization.

2. The teacher or administrator shall have 10 working days from the date of notification to provide verification that he/she has not been found to have participated in cheating. This opportunity for response is intended as a check against mistaken identity or other incorrect information and the requested verification may be provided through a telephone conversation or written correspondence.

3. If the teacher or administrator cannot be reached, suspension of the teaching authorization shall proceed, as will all other steps in the process outlined in this policy.

4. If the department determines that a teacher or administrator was found to have participated in cheating, the teaching authorization shall be suspended. The board, the educator, and the employing school system shall be notified that the teaching authorization has been suspended pending official board action per revocation proceedings.

5. The educator or administrator shall be notified by any appropriate means that his/her teaching authorization has been suspended and that the authorization will be revoked unless documentation is provided verifying that he/she was not found to have participated in cheating.

6. If the department subsequently determines that the teacher or administrator did not participate in cheating, such action shall be communicated to the department and/or the board through documentation provided by the department.

The board may receive such information and may order reinstatement of the teaching authorization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

#### **§109. Suspension and Revocation of Teaching**

##### **Authorizations due to Fraudulent Documentation**

A. A Louisiana teaching authorization shall be suspended or revoked if an educator presents fraudulent documentation pertaining to his/her teaching authorization to the board or the LDE. If the Louisiana teaching authorization of an individual is expired, and the individual has submitted fraudulent documents pertaining to authorization, this information shall be reported to the National Association of State Directors of Teacher Education and Certification (NASDTEC) Clearinghouse by the LDE. Such individuals will be notified per the process outlined in this Section.

B. The department shall conduct an investigation prior to determining that an educator has submitted fraudulent documentation pertaining to his/her teaching authorization. Upon confirmation of the information investigated, the department shall notify the educator that his/her teaching authorization has been suspended pending official board action per revocation proceedings.

C. Such records review shall be limited to the issue of whether or not the document submitted was fraudulent. The educator shall provide the board with any documentation that will refute the fraudulent nature of the document.

D. The committee of the board shall make a recommendation to the full board, based on documentation received from the department and the teacher, whether the teaching authorization should be revoked. The decision of the board shall be transmitted to the local school board and to the affected educator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 44:

#### **§111. Reinstatement of Teaching Authorizations**

A. Reinstatement will never be considered for an educator who has been convicted of a felony for the following crimes.

1. R.S. 14:30, 14:30.1, 14:31, 14:32.6, 14:32.7, 14:32.8, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.1.1, 14:43.2, 14:43.3, 14:43.4, 14:43.5, 14:44, 14:44.1, 14:45, 14:46.2, 14:46.3, 14:46.4, 14:78, 14:78.1, 14:80, 14:80.1, 14:81, 14:81.1, 14:81.2, 14:81.3, 14:81.4, 14:82, 14:82.1, 14:84, 14:86, 14:89, 14:89.1, 14:92, 14:93, 14:93.3, 14:93.5, 14:106, 14:283, and 14:286.

B. Reinstatements of teaching authorization shall not be considered until at least five years have elapsed from the date of entry of final conviction, submission of fraudulent documentation, or the date of investigation results regarding the participation in cheating, which resulted in teacher authorization suspension, revocation, or denial.

C. An applicant may apply to the board for reinstatement of his/her Louisiana teaching authorization after the lapse of time indicated in Subsection B of this Section and under the following conditions.

1. There have been no further convictions, submission of fraudulent documentation, or investigations regarding participation in cheating.

2. In criminal cases, there has been successful completion of all conditions/requirements of any parole and/or probation. The applicant must provide:

- a. relevant documentation; and
- b. a current state and FBI criminal history background check from state police that is clean and clear and evidence that there has been successful completion and relevant documentation of all conditions/requirements of any parole and probation.

**D. Applicant Responsibilities**

1. Contact the office of the Board of Elementary and Secondary Education and request a records review for reinstatement of the authorization.

2. Provide each applicable item identified in Subsection C of this Section, evidence that all requirements for teaching authorization have been successfully completed, and further documentation evidencing rehabilitation. The applicant is recommended to provide letters of support from past/present employers, school board employees and officials, faculty, and administrative staff from the college education department, law enforcement officials, or from other community leaders.

**E. State Board Responsibilities**

1. The board will consider the request for reinstatement and documentation provided. The board is not required to conduct a reinstatement records review and may summarily deny a request for issuance/reinstatement.

2. If the board or its designees decide to conduct a reinstatement records review, board staff shall notify the applicant of a date, time, and place when a committee of the board shall consider the applicant's request. Only the written documentation provided prior to the records review will be considered.

3. The board reserves the right to accept or reject any document as evidence of rehabilitation and the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible for reinstatement of a teaching authorization.

4. In accordance with R.S. 42:17, the board may meet in executive session for discussion of the character, professional competence, or physical or mental health of a person.

5. The board may deny any request for issuance by any applicant who:

- a. failed to disclose prior criminal convictions or expungements;
- b. falsified academic records;
- c. has been found to have participated in cheating in the administration of standardized tests; or
- d. received further criminal convictions or participated in cheating; or
- e. has had additional professional license/certificate censure.

6. The committee of the board shall make a recommendation to the full board regarding whether the teaching authorization issued to the applicant should be issued, reinstated, suspended for an additional period of time, or remain revoked. Board staff shall notify the applicant of the board action.

7. The action of the board is a final decision and can only be appealed to a court of proper jurisdiction in accordance with law.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:6(A)(10), (11), and (15), 17:7(6), 17:10, 17:22(6), 17:391.1-391.10, and 17:411.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 44:

**Family Impact Statement**

In accordance with section 953 and 974 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

**Poverty Impact Statement**

In accordance with section 973 of title 49 of the *Louisiana Revised Statutes*, there is hereby submitted a Poverty Impact Statement on the Rule proposed for adoption, amendment, or repeal. All Poverty Impact Statements shall be in writing and kept on file in the state agency which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records. For the purposes of this section, the word "poverty" means living at or below 100 percent of the federal poverty line.

1. Will the proposed Rule affect the household income, assets, and financial security? No.

2. Will the proposed Rule affect early childhood development and preschool through postsecondary education development? Yes.

3. Will the proposed Rule affect employment and workforce development? No.

4. Will the proposed Rule affect taxes and tax credits? No.

5. Will the proposed Rule affect child and dependent care, housing, health care, nutrition, transportation, and utilities assistance? No.

**Small Business Analysis**

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

### Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

### Public Comments

Interested persons may submit written comments via the U.S. Mail until 12 p.m., October 10, 2018, to Shan N. Davis, Executive Director, Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064. Written comments may also be hand-delivered to Shan Davis, Executive Director, Board of Elementary and Secondary Education, Suite 5-190, 1201 North Third Street, Baton Rouge, LA 70802 and must be date stamped by the BESE office on the date received. Public comments must be dated and include the original signature of the person submitting the comments.

Shan N. Davis  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Teaching Authorizations

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There may be costs for the Department of Education and local school districts to implement the proposed changes as required by Act 634 of 2018 which revise the process and criteria for issuing teaching authorizations for certain school personnel and for determining whether individuals: have a criminal history; have submitted fraudulent documentation related to the issuance of the authorization; and/or have facilitated cheating on any state administered student assessments.

There may be an increase in staff resource needs for the Department of Education to review new and reinstatement certificate applications and to issue teaching authorizations. Public school districts may experience increased costs associated with the availability of certified teachers and their ability to fill positions with individuals who have the requisite authorization. However, the extent of any such increases are indeterminable at this time.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated impacts on revenue collections as a result of the proposed policy revisions.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Charter schools and non-public schools will experience impacts similar to those of the public school districts and schools.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be an indeterminable impact on teachers, and other school employees who will be subject to the requirements of obtaining a new or reinstated teaching authorization in order to continue working in public and non-public schools. While the changes may make it more difficult for some individuals to

obtain the necessary certificate, this would, in turn, increase demand for individuals with such authorization.

Beth Scioneaux  
Deputy Superintendent  
1809#048

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Environmental Quality Office of the Secretary Legal Affairs and Criminal Investigations Division

#### Project Emissions Accounting and Offset Requirements in Specified Parishes (LAC 33:III.504)(AQ380)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.504 (AQ380).

This Rule will remove phrases from LAC 33:III.504 that explicitly preclude emissions decreases associated with a proposed project from being considered in determining whether the project results in a significant emissions increase.

It will also delete obsolete language from Footnote 4 of Table 1 and remove Livingston Parish from the list of parishes in which offsets for certain new stationary sources and modifications are required under LAC 33:III.504.

As described in EPA's March 13, 2018, memorandum entitled "Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program," EPA now interprets the provisions of the federal New Source Review (NSR) programs "as providing that any emissions decreases that may result from a given proposed project are to be considered when calculating at Step 1, whether the proposed project will result in a significant emissions increase." Previously, only emissions increases were considered in determining whether a proposed project resulted in a significant emissions increase and therefore triggered consideration of the net emissions increase over the project's contemporaneous period (i.e., Step 2), even if emissions decreases were inherently linked to the project. Accordingly, phrases which explicitly preclude emissions decreases associated with a proposed project from being considered in determining whether the project results in a significant emissions increase are being removed from LAC 33:III.504.

The reference to "a period of five years after the effective date of the rescission of the NOx waiver" is also being removed from Footnote 4 of Table 1 in Chapter 504. EPA rescinded Baton Rouge's Section 182(f) NOx exemption (i.e., the NOx waiver) on May 5, 2003, effective June 4, 2003 (68 FR 23597). Therefore, a newly proposed project could not fall within the aforementioned date range.

Finally, Livingston Parish is being removed from the list of parishes in which offsets for certain new stationary sources and modifications are required under LAC 33:III.504.M. Livingston Parish has only four Part 70 sources (AIs 9154, 11767, 19875, and 80537). Notably, none of the four are major sources of NOx, and only on (AI 19875) is a major

source of VOC. Further, actual 2017 NO<sub>x</sub> and VOC emissions reported to LDEQ's Emissions Reporting and Inventory Center (ERIC) by owners/operators of facilities located in Livingston Parish comprised only 0.7 percent and 2.5 percent of total NO<sub>x</sub> and VOC emissions, respectively, reported by owners/operators of facilities located in five parishes in which offsets may presently be required (i.e., Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge).

The basis and rationale for this Rule are to :

Make LDEQ's Nonattainment New Source Procedures consistent with federal protocols by removing phrases from LAC 33:III.504 that explicitly preclude emissions decreases associated with a proposed project from being considered in determining whether the project results in a significant emissions increase;

Delete obsolete language from Footnote 4 of Table of Chapter 504; and

Remove Livingston Parish from the list of parishes in which offsets for certain new stationary sources and modifications are required under LAC 33:III.504.M.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

### **Title 33 ENVIRONMENTAL QUALITY Part III. Air**

#### **Chapter 5. Permit Procedures**

#### **§504. Nonattainment New Source Review (NNSR) Procedures and Offset Requirements in Specified Parishes**

A. - A.2. ...

3. The emissions increase that would result from a proposed modification shall be compared to the trigger values listed in Subsection L, Table 1 of this Section to determine whether a calculation of the net emissions increase over the contemporaneous period must be performed.

A.3.a. - K. ...

\* \* \*

L. Table 1—Major Stationary Source/Major Modification Emission Thresholds

\* \* \*

1. ...

2. Consideration of the net emissions increase will be triggered for any project that would increase emissions by 40 tons or more per year.

3. ...

4. Consideration of the net emissions increase will be triggered for any project that would increase VOC or NO<sub>x</sub> emissions by 5 tons or more per year or for any project that would result in a 25 ton or more per year cumulative increase in emissions of VOC or NO<sub>x</sub> within the contemporaneous period.

5. ...

M. Offset Requirements in Specified Parishes. Except as provided in Paragraph M.4 of this Section, the provisions of this Subsection shall apply to stationary sources located in the parishes of Ascension, East Baton Rouge, Iberville, and West Baton Rouge if the parish's designation with respect to the 8-hour national ambient air quality standard (NAAQS) for ozone is attainment, marginal nonattainment, or moderate nonattainment.

1. ...

2. Existing Stationary Sources

a. Consideration of the net emissions increase shall be triggered for any physical change or change in the method of operation that would increase emissions of VOC or NO<sub>x</sub> by 40 tons per year or more.

2.b. - 5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:176 (February 1993), repromulgated LR 19:486 (April 1993), amended LR 19:1420 (November 1993), LR 21:1332 (December 1995), LR 23:197 (February 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 27:2225 (December 2001), LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 30:2801 (December 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 31:3123, 3155 (December 2005), LR 32:1599 (September 2006), LR 33:2082 (October 2007), LR 34:1890 (September 2008), LR 37:1568 (June 2011), LR 38:1232 (May 2012), amended by the Office of the Secretary, Legal Division, LR 38:2766 (November 2012), LR 41:2135 (October 2015), LR 42:403 (March 2016), LR 43:926 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

#### **Family Impact Statement**

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

This Rule has no known impact on poverty as described in R.S. 49:973.

#### **Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

#### **Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ380. Such comments must be received no later than November 6, 2018, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to [deidra.johnson@la.gov](mailto:deidra.johnson@la.gov). Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ380. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

#### **Public Hearing**

A public hearing will be held on October 30, 2018, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301

Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson  
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Project Emissions Accounting and Offset  
Requirements in Specified Parishes**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE  
OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no implementation costs or savings to state or local governmental units as a result of the proposed rule.

The purpose of the proposed rule is to make changes to the Nonattainment New Source Review (NNSR) procedures relative to project emissions and offset requirements in specified parishes. It further removes obsolete language regarding when the net emissions increase of NOx must be considered.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units as a result of the proposed rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

The proposed rule will affect owners/operators of existing stationary sources subject to NNSR provisions under LAC 33:III.504. Consistent with the EPA's interpretation of corresponding federal provisions, the proposed rule will allow emissions decreases associated with a proposed project to be considered when determining whether the project results in a significant emissions increase. Therefore, the proposed action may result in fewer projects triggering NNSR requirements.

The proposed rule will also affect owners/operators seeking to construct a new stationary source, or modify an existing stationary source in Livingston Parish. Sources with potential NOx and/or VOC emissions in excess of 50 tons per year will no longer be subject to the offset requirements under LAC 33:III.504.M. Therefore, owners/operators proposing certain projects will not have to secure NOx and/or VOC emission reduction credits (ERC), thereby reducing their overall costs.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

There will be no effect on competition or employment in the public or private sector as a result of the proposed rule.

Herman Robinson  
General Counsel  
1809#018

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Environmental Quality  
Office of the Secretary  
Legal Affairs and Criminal Investigations Division**

Radiation Protection  
(LAC 33:XV.102, 328, 342, 390, 499, 763,  
1519, 1613, 1615, and 1637)(RP062ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Radiation Protection regulations, LAC 33:XV.102, 328, 342, 390, 499, 763, 1519, 1613, 1615, and 1637 (Log #RP062ft).

This Rule is identical to federal regulations found in 10 CFR 19, 20, 37, 40, 61, and 71, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or P.O. Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the rule. This rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule makes minor changes to recordkeeping, reciprocity and physical protection. Also, all references to Indian tribes are changed to Indian tribes. This Rule was promulgated by the Nuclear Regulatory Commission (NRC) as RATS ID 2015-4 and 2015-5. This Rule will update the state regulations to be compatible with changes in the federal regulations. The changes in the state regulations are category B, C and H&S requirements for the State of Louisiana to remain an NRC agreement state. The basis and rationale for this Rule are to mirror the federal regulations and maintain an adequate agreement state program. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/ health benefits and social/economic costs is required.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part XV. Radiation Protection**

**Chapter 1. General Provisions**

**§102. Definitions and Abbreviations**

As used in these regulations, these terms have the definitions set forth below. Additional definitions used only in a certain chapter may be found in that Chapter.

\* \* \*

*Indian Tribe*—an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5130.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 19:1421 (November 1993), LR 20:650 (June 1994), LR 22:967 (October 1996), LR 24:2089 (November 1998), repromulgated LR 24:2242 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2563 (November 2000), LR 26:2767 (December 2000), LR 30:1171, 1188 (June 2004), amended by the Office of Environmental Assessment, LR 31:44 (January 2005), LR 31:1064 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:811 (May 2006), LR 32:1853 (October 2006), LR 33:1016 (June 2007), LR 33:2175 (October 2007), LR 34:982 (June 2008), LR 36:1771 (August 2010), amended by the Office of the Secretary, Legal Division, LR 38:2748 (November 2012), LR 40:283 (February 2014), LR 40:1338 (July 2014), LR 40:1926 (October 2014), LR 41:1276 (July 2015), LR 41:2321 (November 2015), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

### **Chapter 3. Licensing of Byproduct Material**

#### **Subchapter D. Specific Licenses**

#### **§328. Special Requirements for Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices that Contain Byproduct Material**

A. - J.2.d.i. ...

ii. the individual practiced at a pharmacy at a government agency or a federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or at an earlier date as recognized by the Nuclear Regulatory Commission;

J.2.e. - e.iv. ...

v. documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or at an earlier date as noticed by the NRC; and

J.2.e.vi. - M.4.g. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), LR 24:2092 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2569 (November 2000), LR 26:2768 (December 2000), LR 27:1228 (August 2001), LR 30:1664 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2526 (October 2005), LR 33:2179 (October 2007), LR 36:1771 (August 2010), amended by the Office of the Secretary, Legal Division, LR 38:2746 (November 2012), LR 40:286 (February 2014), LR 40:1341 (July 2014), LR 41:1278 (July 2015), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

#### **§342. Records**

A. Each person who receives source or byproduct material in accordance with a license issued in accordance with these regulations shall keep records showing the receipt, transfer, and disposal of this source or byproduct material as follows.

1. The licensee shall retain each record of receipt of source or byproduct material as long as the material is

possessed and for three years following transfer or disposition of the source or byproduct material.

2. The licensee who transferred the material shall retain each record of transfer of source or byproduct material until the department terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

3. The licensee shall retain each record of disposal of source or byproduct material until the department terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

4. If source or byproduct material is combined or mixed with other licensed material and subsequently treated in a manner that makes direct correlation of a receipt record with a transfer, export, or disposition record impossible, the licensee may use evaluative techniques (e.g., first-in, first-out), to make the records that are required by this Chapter account for 100 percent of the material received.

B. The licensee shall retain each record that is required by the regulations in this Chapter or by license condition for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, each record must be maintained until the department terminates the license that authorizes the activity that is subject to the recordkeeping requirement.

C. Prior to license termination, each licensee authorized to possess source material, in an unsealed form, shall forward the following records to the department:

1. records of disposal of licensed material made under LAC 33:XV.461, 462, 463, and 464; and

2. records required by LAC 33:XV.472.B.4.

D. If licensed activities are transferred or assigned in accordance with LAC 33:XV.331.B, each licensee authorized to possess radioactive material, in an unsealed form, shall transfer the following records to the new licensee, and the new licensee will be responsible for maintaining these records until the license is terminated:

1. records of disposal of licensed material made under LAC 33:XV.461, 462, 463, and 464; and

2. records required by LAC 33:XV.472.B.4.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1018 (May 2000), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

### **Subchapter E. Reciprocity**

#### **§390. Reciprocal Recognition of Licenses**

A. Subject to these regulations, any person who holds a specific license from the U.S. Nuclear Regulatory Commission, any other agreement state, or any licensing state and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in such licensing document within this state, except in areas of exclusive federal jurisdiction, for not more than 180 days in any calendar year provided that the following conditions are met.

A.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2574 (November 2000), LR 26:2768 (December 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2528 (October 2005), LR 33:2181 (October 2007), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

#### **Chapter 4. Standards for Protection against Radiation**

##### **Subchapter Z. Appendices**

##### **§499. Appendices A, B, C, D, E**

A. Appendix A - C. Appendix C ...

\* \* \*

D. Appendix D

##### **Requirements for Transfer of Low-Level Radioactive Waste for Disposal at Land Disposal Facilities and Manifests**

A. - B. ...

C. NRC Forms 540, 540A, 541, 541A, 542, and 542A, and the accompanying instructions, in hard copy, may be obtained by writing or calling the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-5877 or by visiting the NRC's Web site at <http://www.nrc.gov> and selecting forms from the index found on the home page.

D. - H.5.b. ...

E. Appendix E

Classification and Characteristics of Low-Level Radioactive Waste

A. - C. ...

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 20:653 (June 1994), LR 22:973 (October 1996), LR 24:2096 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2580 (November 2000), LR 28:1012 (May 2002), amended by the Office of Environmental Assessment, LR 31:48 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2530 (October 2005), LR 33:2183 (October 2007), amended by the Office of the Secretary, Legal Division, LR 40:289 (February 2014), LR 40:1341 (July 2014), LR 41:1279 (July 2015), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

#### **Chapter 7. Use of Radionuclides in the Healing Arts**

##### **§763. Training**

A. - B.2. ...

3. A radiation safety officer, a medical physicist, or a nuclear pharmacist, who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses or in the practice of nuclear pharmacy at a government agency or federally-recognized Indian Tribe before November 30, 2007, or at any other location of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements of Subsection A, J, or K of this Section, respectively, when performing the same uses. A nuclear pharmacist, who prepared only radioactive drugs containing accelerator-

produced radioactive materials, or a medical physicist, who used only accelerator-produced radioactive materials, at the locations and time period identified in this Paragraph, qualifies as an authorized nuclear pharmacist or an authorized medical physicist, respectively, for those materials and uses performed before these dates, for purposes of this Chapter.

4. - 5. ...

6. A physician, dentist, or podiatrist who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses performed at a government agency or federally-recognized Indian Tribe before November 30, 2007, or at any other location of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements of this Section when performing the same medical uses. A physician, dentist, or podiatrist who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses at the locations and time period identified in this Paragraph, qualifies as an authorized user for those materials and uses performed before these dates, for purposes of this Chapter.

B.7. - M. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2106 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2590 (November 2000), LR 30:1186 (June 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:814 (May 2006), LR 34:983 (June 2008), LR 34:2121 (October 2008), LR 36:1772 (August 2010), amended by the Office of the Secretary, Legal Division, LR 38:2748 (November 2012), LR 40:1342 (July 2014), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

#### **Chapter 15. Transportation of Radioactive Material**

##### **§1519. Advance Notification of Shipment of Irradiated Reactor Fuel and Nuclear Waste [Formerly §1516]**

A. As specified in Subsections B, C, and D of this Section, each licensee shall provide advance notification to the governor, or to the governor's designee, of the shipment of licensed material, within or across the boundary of Louisiana, before the transport, or delivery to a carrier for transport, of licensed material outside the confines of the licensee's plant or other place of use or storage. A list of the names and mailing addresses of the governors' designees receiving advance notification of transportation of nuclear waste was published in the *Federal Register* on June 30, 1995 (60 FR 34306). The list of governor's designees and tribal official's designees of participating tribes will be published annually in the *Federal Register* on or about June 30 to reflect any changes in the information. The list of the names and mailing addresses of the governors' designees and Tribal official's designees of participating tribes is also available on request from the Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. In Louisiana, the governor's designee is the Louisiana State Police, 7919 Independence Boulevard, Box 66614 (#A2621), Baton Rouge, LA 70896-6614.



1. As specified in Subsections B, C, and D of this Section, after June 11, 2013, each licensee shall provide advance notification to the *tribal official* as defined in LAC 33:XV.102 of participating tribes referenced in Subsection A of this Section, or the official's designee, of the shipment of licensed material, within or across the boundary of the tribe's reservation, before the transport, or delivery to a carrier for transport, of licensed material outside the confines of the licensee's plant, or other place of use or storage.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104.B and 21113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1269 (June 2000), LR 26:2602 (November 2000), amended by the Office of Environmental Assessment, LR 30:2029 (September 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2537 (October 2005), LR 33:2190 (October 2007), LR 34:2111 (October 2008), amended by the Office of the Secretary, Legal Division, LR 40:1928 (October 2014), LR 41:2325 (November 2015), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

## **Chapter 16. Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material**

### **Subchapter B. Background Investigations and Access Control Program**

#### **§1613. Requirements for Criminal History Records Checks of Individuals Granted Unescorted Access to Category 1 or Category 2 Quantities of Radioactive Material**

A. - B.2. ...

C. Procedures for Processing of Fingerprint Checks

1. For the purpose of complying with this Subchapter, licensees shall use an appropriate method listed in 10 CFR 37.7 to submit to the U.S. Nuclear Regulatory Commission, Director, Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop TWB-05 B32M, Rockville, Maryland 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling 1-630-829-9565, or by email to [FORMS.Resource@nrc.gov](mailto:FORMS.Resource@nrc.gov). Guidance on submitting electronic fingerprints can be found at <http://www.nrc.gov/site-help/e-submittals.html>.

2. Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to U.S. NRC. For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security at 301-492-3531. Combined payment for multiple applications is acceptable. The commission publishes the amount of the fingerprint check application fee on the NRC's public web site. To find the current fee amount, go to the electronic submittals page at <http://www.nrc.gov/site-help/e-submittals.html> and see the

link for the criminal history program under electronic submission systems.

3. The commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 41:2329 (November 2015), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

#### **§1615. Relief from Fingerprinting, Identification, and Criminal History Records Checks and Other Elements of Background Investigations for Designated Categories of Individuals Permitted Unescorted Access to Certain Radioactive Materials**

A. - A.9. ...

10. commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;

A.11. - B.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 41:2330 (November 2015), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

Subchapter C. Physical Protection Requirements During Use

#### **§1637. Reporting of Events**

A. The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the Office of Environmental Compliance by telephone at (225) 765-0160. In no case shall the notification to the department be later than four hours after the discovery of any attempted or actual theft, sabotage, or diversion.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and 2104.B.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 41:2334 (November 2015), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

#### **Family Impact Statement**

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

This Rule has no known impact on poverty as described in R.S. 49:973.

#### **Provider Impact Statement**

This Rule has no known impact on providers as described in HCR 170 of 2014.

#### **Public Comments**

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by RP062ft. Such comments must be received no later than October 30, 2018, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and

Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to [deidra.johnson@la.gov](mailto:deidra.johnson@la.gov). The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of RP062ft. This regulation is available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

#### **Public Hearing**

A public hearing will be held on October 30, 2018, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

Herman Robinson  
General Counsel

#### **NOTICE OF INTENT**

#### **Office of the Governor Board of Pardons and Committee on Parole**

Clemency  
(LAC 22:V.211 and XI.307, 510, and 514)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Board of Pardons and Parole hereby gives notice of its intent to amend its rules of LAC 22:V: 211. This proposed rule changes provides clarification to hearing notification requirements to victims. LAC 22: XI: 307, 510, 514. This rule implements Act 573 and 604 of the 2018 Regular Session of the Louisiana Legislature. Act 573 modifies the eligibility criteria for medical parole and medical treatment furlough. Act 604 provide parole eligibility for offenders who committed their offense during a certain time period. This proposed rule changes provides clarification to hearing notification requirements to victims, modifies the criteria for medical parole and medical treatment furlough and provide parole eligibility for offenders who committed their offense during a certain time period.

#### **Title 22**

#### **CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT**

#### **Part V. Board of Pardons**

#### **Chapter 2. Clemency**

#### **§211. Hearings before the Pardon Board**

A - B. ...

C. At least 60 days prior to public hearing date, the board shall give written notice of the date, time, and place to the following:

1. the district attorney and sheriff of the parish in which the applicant was convicted and, in Orleans Parish, the superintendent of police;
2. the applicant;
3. the direct victim or the spouse or next of kin of the deceased victim. The notice is not required when the victim, or the spouse or next of kin of a deceased victim advises the board, in writing, that such notification is not desired;
4. the Crime Victims Services Bureau of the Department of Public Safety and Corrections; and
5. any other interested person who notifies the Board of Pardons, in writing, giving name and return address.

D. The direct victim, the guardian of the victim, or close relative of a deceased victim shall have the right to make a written or oral statement as to the impact of the crime.

E. The direct victim, the guardian of the victim, or close relative of a deceased victim or a victim's advocacy group, and the district attorney or his representative may also appear before the panel by means of telephone communication from the office of the local district attorney.

1. Only three persons in favor, to include the applicant, and three in opposition, to include the victim/victim's family member, will be allowed to speak at the clemency hearing.

2. Any person making an oral presentation to the board will be allowed no more than 5 minutes. All persons making oral presentations in favor of an applicant shall be allowed cumulatively no more than 10 minutes. Any person making oral presentations against an applicant, including victims, shall be allowed cumulatively no more than 10 minutes.

F. There is no limit on written correspondence in favor of and/or opposition to the applicant's request. a candidate for parole release or an applicant for clemency.

G. The board shall provide notice to the Department of Public Safety and Corrections, Crime Victims Services Bureau at least 30 days prior to pardon hearing.

H. If an applicant is requesting commutation of sentence, and is released from custody and/or supervision prior to public hearing date, the case will be closed without notice to the applicant. Applicant may reapply two years from the date of release.

I. Applicant's failure to attend and/or notify the board of pardons office of his/her inability to attend the hearing will result in an automatic denial. The applicant may reapply two years from the date of scheduled hearing. Lifers who fail to attend and/or advise of inability to attend may reapply in five years if it is his/her initial hearing, and every five years thereafter.

J. Four members of the board shall constitute a quorum for the transaction of business, and all actions of the board shall require the favorable vote of at least four members of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4, 15:574.12, and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, LR 39:2256 (August 2013), amended LR 42:1088 (July 2016), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 43:46 (January 2017), LR 44:574 (March 2018), LR 44:

## **Part XI. Committee on Parole**

### **Chapter 3. Parole—Eligibility and Types**

#### **§307. Medical Parole/Medical Treatment Furlough**

A. An offender determined by the Department of Public Safety and Corrections to be permanently disabled offender or terminally ill offender may be eligible for medical parole consideration.

1. Upon referral by the Department of Public Safety and Corrections, the committee may schedule the offender for a hearing for medical parole consideration.

2. Offenders who are serving a sentence for conviction of first degree murder, second degree murder, or who are sentenced to death are not eligible for medical parole consideration.

3. Medical parole consideration shall be in addition to any other parole for which an offender may be eligible. An offender eligible for both medical parole and traditional parole under the provisions of R.S. 15:574.4 shall be first considered for traditional parole.

4. *Permanently Disabled Offender*—any offender who is unable to engage in any substantial gainful activity by reason of any medically-determinable physical impairment which can be expected to result in death or which is or can be expected to be permanently irreversible.

5. *Terminally Ill Offender*—any offender who, because of an existing medical condition, is irreversibly terminally ill. For the purposes of this Section, “terminally ill” is defined as having a life expectancy of less than one year due to an underlying medical condition.

6. In considering an offender for medical parole, the committee may require that additional medical evidence be produced or that additional medical examinations be conducted.

B. An offender determined by the secretary of the DPS and C to be a limited-mobility offender may be considered for medical treatment furlough release to an off-site medical facility appropriate to meet the offender’s medical and treatment needs.

1. Upon referral by the Department of Public Safety and Corrections, the committee may schedule the offender for a hearing for medical treatment furlough.

2. Offenders who are serving a sentence for conviction of first degree murder or who are sentenced to death are not eligible for medical treatment furlough consideration.

3. Medical parole consideration shall be in addition to any other parole for which an offender may be eligible. An offender eligible for both medical parole and traditional parole under the provisions of R.S. 15:574.4 shall be first considered for traditional parole.

4. *Limited Mobility Offender*—any offender who is unable to perform activities of daily living without significant help or is totally confined to a bed or chair,

including but not limited to prolonged coma and mechanical ventilation. Due to their significant limitation in mobility, these offenders represent a low public safety risk to society. If granted a medical furlough, limited mobility offenders shall only be discharged to an acute care hospital, nursing home, or other healthcare facility.

5. In considering an offender for medical parole, the committee may require that additional medical evidence be produced or that additional medical examinations be conducted

C. The authority to grant medical parole or medical treatment furlough shall rest solely with the committee.

1. The committee on parole shall determine the risk to public safety and shall grant medical parole or medical treatment furlough only after determining that the offender does not pose a threat to public safety.

2. As a condition of the medical parole or medical treatment furlough, the offender shall waive their right to medical confidentiality and privacy.

3. Due to the nature of medical parole/medical treatment furlough cases, an exception to board policy, 05-509, victim notification and participation in hearings, shall be made regarding the notice to victims, requiring the notice to be at least 60 days in advance of the scheduled hearing date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:2297 (December 1998), amended by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2270 (August 2013), LR 41:43 (January 2015), LR 42:1283 (August 2016), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 43:2495 (December 2017), LR 44:575 (March 2018), LR 44:

### **Chapter 5. Meetings and Hearings of the Committee on Parole**

#### **§510. Victims**

A. Before a parole panel considers parole release for an offender who is serving a sentence of an offense in which a person was a victim, the direct victim of the offense shall be allowed to present written or oral testimony of the victim's views about the offense, the offender, and the effect of the offense on the victim. The parole panel shall allow one person to appear in person before the panel to present testimony on behalf of the victim. Nothing in this Section is intended to limit the panel's discretion to allow individual victims to make personal appearance or to make contact by phone through the local district attorney's victim advocacy representative. There is no limit on written correspondence in favor of and/or opposition to an offender's consideration for parole.

B. The direct victim, spouse, or next of kin of a deceased victim and any person who has filed a victim notice and registration form shall be advised in writing no less than 90 days prior to the scheduled hearing date.

1. *Victim*—an individual against whom a crime has been perpetrated.

C. The notice shall advise the victim, spouse, or next of kin of a deceased victim that:

1. the hearing is open to the public;

2. he or she may remain in the hearing room during the entire hearing (except during executive session); and

3. the direct victim, the guardian of the victim, or close relative of a deceased victim will be allowed to speak to the panel prior to its making a decision in the case.

D. The Committee on Parole has delegated the responsibility for advance notice of a scheduled hearing to the direct victim to the Department of Public Safety and Corrections, Division of Probation and Parole. This notification is not required when the direct victim cannot be located despite the exercise of due diligence.

E. The written notice is not required when the victim, the spouse, or next of kin of a deceased victim, advises the committee in writing that such notification is not desired.

F. If victim notification is determined to have not met the advance notice time requirements required by this section, a victim may request that a hearing be re-scheduled if the hearing has not yet been conducted. Likewise, a victim may waive the notice requirement; however, such waiver must be received in writing from the victim.

G. Should a hearing be re-scheduled by the board for any reason other than the victim's request, the board shall notify the victim as soon as possible by telephone and shall follow-up with written confirmation of the telephone notification via certified U.S. Mail (with return receipt requested).

H. The direct victim, the guardian of the victim, or close relative of a deceased victim shall have the right to make a written or oral statement as to the impact of the crime.

I. The direct victim, the guardian of the victim, or close relative of a deceased victim or a victim's advocacy group, and the district attorney or his representative may also appear before the panel by means of telephone communication from the office of the local district attorney.

J. If more than one person is entitled to appear for a parole hearing, the person chosen by all persons entitled to appear may serve as a spokesperson for all those entitled to appear. Any person making an oral presentation to the parole panel will be allowed no more than five minutes. However, at the parole panel chairman's discretion more than one person may present a written or oral statement to the panel.

1. All persons making oral presentations in favor of an applicant shall be allowed cumulatively no more than 10 minutes. All persons making oral presentations against an applicant, including victims, shall be allowed cumulatively no more than 10 minutes.

K. There is no limit on written correspondence in favor of and/or opposition to a candidate for parole release.

L. The Committee on Parole shall notify all persons who have filed a victim notice and registration form with the Department of Public Safety and Corrections of an offender's release from incarceration by parole. Such written notice shall be sent by certified mail (with return receipt requested).

M. Notice to Crime Victim Services Bureau of Parole Hearings. The committee shall provide notice to the Department of Public Safety and Corrections Crime Victims Services Bureau at least 30 days prior to parole hearings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2263 (August 2013), amended by the Office of the Governor, Board of Pardons and Committee on Parole, LR 43:47 (January 2017), LR 44:575 (March 2018), LR 44:

#### **§514. Voting/Votes Required**

##### **A. Unanimous Vote**

1. A unanimous vote is required to grant parole or to recommend work release regardless of the number of

committee members at the parole hearing, except as provided for in Paragraph 2 of this Subsection.

2. Notwithstanding any other provision of law, no person convicted of a crime of violence against any peace officer as defined in R.S. 14:30(B), shall be granted parole except after a meeting, duly noticed and held on a date to be determined by the chairman, at which at least five of the seven members of the committee are present and all members present vote to grant parole.

3. Notwithstanding any other provision of law, an offender serving a life sentence for second degree murder as defined in R.S. 14:30.1 and pursuant to the subsections, shall be granted parole except after a meeting, duly noticed and held on a date to be determined by the chairman, at which at least five of the seven members of the committee are present and all members present vote to grant parole.

a. The offense was committed after July 2, 1973, and prior to June 29, 1979.

b. The offender has served forty years of the sentence imposed.

4. A unanimous vote is required to consider any action when the offender is not present as described in §511.B.2.b or §513.A.4.a.

5. All special conditions of release, including special conditions of diminution of sentence/parole supervision release, shall be approved by a unanimous vote of the panel.

B - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Pardons, Committee on Parole, LR 39:2264 (August 2013), amended LR 41:45 (January 2015), LR 44:

#### **Family Impact Statement**

Amendment to the rules has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relations to individual or community asset development as described in R.S. 49:973.

#### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session.

#### **Public Comments**

Written comments may be addressed to Elizabeth Traylor, Executive Management Officer, Board of Pardons and Parole, P.O. Box 94304, Baton Rouge, LA 70804 until 4:30 p.m. on October 10, 2018

Sheryl M. Ranatza  
Board Chair

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Clemency**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will not have a fiscal impact on state or local governmental unit expenditures. The proposed rule

changes provide clarification to hearing notification requirements to victims. This rule implements Act 573 and 604 of the 2018 Regular Session of the Louisiana Legislature. Act 573 modifies the eligibility criteria for medical parole and medical treatment furlough. Act 604 provides for parole eligibility for offenders who committed their offense during a certain time period.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units as a result of the proposed rule changes.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There is no estimated cost and/ or economic benefit to directly affected persons or nongovernmental groups as a result of the proposed rule change.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There is no estimated effect on competition and employment as a result of the proposed rule changes.

Thomas C. Bickham, III  
Undersecretary  
1809#032

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Office of the Governor  
Boxing and Wrestling Commission**

**Boxing and Wrestling Standards  
(LAC 46:XI.Chapters 1 and 3)**

The Louisiana State Boxing and Wrestling Commission does hereby exercise the provisions of the Administrative Procedure Act, R.S. 49:953(b) and 49:967(D) to adopt the following Rules. This proposed Rule is necessary to promote the safety of contestants, other participants and spectators by updating medical and safety requirements, modernize language and reorganize the text for clarity and to introduce new definitions and sections to signify current national and international standards of modern ring sports.

The commission will move the following rules, with amendments, to Chapter 1. General Rules: §305. Contestant, §311. Officials Weighing In, §313. Contestants Apparel and Physical Appearance, §319. Permissible Items in Corner, §323. Bell or Gong, §325. Physicians, §327. Timekeeper, §341. Seconds and §347. Presence in Dressing Room.

The commission also repeals the following rules as obsolete, redundant or incorporated into existing or new rules: §103. Insulting or Abusive Remarks, §301. Commission Demands, §309. Recommended Weight Differences, §331. Announcer, §333. Manager, §335. Compensation of Officials and §345. Termination of Bouts.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XI. Boxing and Wrestling**

**Chapter 1. General Rules**

**§101. Definitions**

A. The following words and phrases when used in this Subpart shall have the meanings given to them in this Section unless the context clearly indicates otherwise.

B. No definition contained in this section shall be interpreted or construed or applied in a manner which is inconsistent with the definitions contained under R.S. 4:85.

*Amateur*—any of the following:

a. contests or exhibitions of armed or unarmed combat or any combination thereof conducted by or participated in exclusively by any state-accredited middle school or high school, college, or university, or by any association or organization of a school, college, or university, when each participant in the contests or exhibitions is a bona fide student in the state-accredited middle school or high school, college, or university;

b. any boxing contest or exhibition if it is registered and sanctioned by United States Amateur Boxing, Inc., or Golden Gloves of America as an amateur boxing contest or exhibition;

c. any contest or exhibition which specifically has been named by the commission as an amateur event.

*Boxing*—the act of attack and defense with the fists, practiced as a sport.

\* \* \*

*Commission*—the Boxing and Wrestling Commission for the state of Louisiana, as well as the commissioner in attendance at the event, an individual commissioner, deputy commissioner or Commission personnel where applicable.

*Commissioner in Attendance*—this shall be the Commissioner, Deputy Commissioner or event coordinator who is in attendance at the event and who is primarily responsible not only for the supervision of the event, but the enforcement of the rules set forth herein as well as any statutory regulations.

*Contest*—a boxing or mixed technique event in which contestants strive earnestly in good faith to win.

*Contestant*—any participant in all sports under the jurisdiction of this commission including but not limited to boxing, wrestling, and mixed technique event.

\* \* \*

*Exhibition*—as applied to boxing and MTE events, any event in which the participants show or display their skills without necessarily striving to win. As applied to professional wrestling events, bouts for entertainment purposes wherein there are no dangerous blows intended to be struck and the result of each bout is predetermined. As applied to mixed technique events, see §737 in Chapter 7, Mixed Technique Events herein.

\* \* \*

*Manager*—a person who, directly or indirectly, controls or administers the affairs of any boxer, wrestler or MTE contestant.

\* \* \*

*Mixed Technique Event* – contests in which contestants attack and defend with wrestling or grappling and with the fists and other parts of the human body including, but not limited to, the foot, knee, leg, elbow, or head, wherein dangerous blows are intended to be struck with full contact.

*Physician*—a person possessing a doctor of medicine (allopathic/M.D.), doctor of osteopathy or doctor of osteopathic medicine degree (osteopathic/D.O.) or an equivalent degree duly awarded by a medical or osteopathic educational institution approved by the commission; such person shall have in their possession a permanent license in the State of Louisiana, or a person licensed in another State, who is recognized by the commission.

\* \* \*

*Professional*—Repealed.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2003 (August 2005), LR 32:242 (February 2006), LR 44:

#### **§102. Annual License Fees**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:65(B).

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2003 (August 2005), amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 35:53 (January 2009), repealed LR 44:

#### **§103. Annual License Fees**

##### **[Formerly §102]**

A. The following is a scale of fees for licensees.

1. Wrestling and Mixed Technique Event Promoters—\$250
2. Boxing Promoters—\$500
3. Matchmakers—\$250
4. Referees—\$25
5. Managers—\$25
6. Announcers—\$25
7. Professional Boxing Contestants in Main Bouts—\$25
8. Seconds—\$25
9. Professional Wrestling Contestants—\$25
10. Other licenses \$2511. Mixed Technique Exhibition Event Contestant—\$0

B. Each license or renewal thereof shall be in effect for a license year from January 1 of the year issued and expiring on the 31st day of December in the year of issuance.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:65(B).

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2003 (August 2005), amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 35:53 (January 2009), LR 44:

#### **§107. Use of Drugs**

A. No participant before entering a contest or exhibition, shall have taken or had administered to him any drug, narcotic, alcohol, stimulant, depressant, diuretic, IV fluids, androgenic steroids or analgesic of any description. See complete list of prohibited drugs in The World Anti-Doping Code's Prohibited List, a copy of which can be found on [Louisianaboxing.org](http://Louisianaboxing.org).

B. The physician in attendance, or the commission may on a case-by-case basis, allow exceptions to Subsection A.

C. Anyone having knowledge of activity described in Subsection A shall immediately report this information to the commission.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

#### **§109. Concealment of Disability**

A. Any contestant, who conceals from a commission physician, commissioner or commission official any known disability shall, at the discretion of the commission, either forfeit his license or be suspended.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

#### **§111. Event Coordinator**

A. The commission may appoint an event coordinator for any event the commission deems necessary at a fee not to exceed \$350 per event to be paid by the promoter of said event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:79.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 36:757 (April 2010), amended LR 44:

#### **§113. Financial Reports**

A. The financial report of boxing, wrestling and mixed technique event shows and other sanctioned events must include the number of complimentary tickets made available and those actually used, in addition to the other requirements prescribed by law. As per R.S. 4:68, each event promoter shall provide to the commission a gate receipt and tax report form or a certified ticket manifest and taxes due for the event within 24 hours of the event.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

#### **§115. Medical Equipment Required**

A. There shall be an ambulance no further than 300 feet from the ring and duly licensed EMT's or paramedics with appropriate resuscitation equipment no further than 100 feet away from the ring at all times. EMT's will be paid directly by the promoters/producers of events with fees in accordance

with LAC 46:XXXVIII, Professional and Occupational Standards: Emergency Medical Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2003 (August 2005), amended LR 44:

#### **§117. Medical Requirements**

##### **[Formerly §108]**

A. Each contestant participating in any sport under this commission's jurisdiction must furnish to the commission physician a certified medical certificate evidencing that the contestant has been tested for current 4<sup>th</sup> generation immuno assay for HIV, Hepatitis B and Hepatitis C and said test results are negative. Said tests and certificates shall be dated not more than six months prior to the scheduled event. Said certificate is to be presented at least five business days prior to any event to the commission with the only exception to be those allowed by the commission on a case by case basis to extend the time period for submission of the test results, or to require the test results be submitted earlier than five days prior.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64, and R.S. 4:67

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 32:242 (February 2006), amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 34:1601 (August 2008), LR 35:53 (January 2009), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 36:756 (April 2010), LR 36:992 (May 2010), repromulgated LR 36:1242 (June 2010), LR 44:

#### **§121. Physical Examination of Contestants**

##### **[Formerly §325]**

A. Each contestant must be examined prior to entering the ring by a commission physician. The physician shall certify in writing over his signature as to the contestant's physical condition to engage in such contest. The physician (and in the case of certain contracts two physicians) shall be in attendance during the contest, prepared to deal with any emergency which may arise. The physician shall file his report of examination with the commission. Blank forms of physician's reports may be obtained from the commission office. All questions must be answered in full.

B. The examination given contestants must be as follows: temperature, pulse (sitting and standing), lungs, heart, blood pressure and urine analysis (when deemed necessary).

C. No contestant shall be allowed to engage in any contest if one or more of the following conditions are found by the commission physician:

1. any hernia, or bubonocoele;
2. organic heart murmurs;
3. active pulmonary lesions;
4. temperature over 100.8 degrees;
5. systolic pressure over 150;
6. infectious skin lesions, such as boils or infected wounds;
7. recent wounds, especially on face and ears;
8. hand injuries and fractures less than six weeks old if in the doctor's opinion, the injury would be detrimental to his showing;

9. use of illegal drugs, abuse of prescription medications, alcohol, stimulants, depressants or analgesics of any description except as permitted by §107, Use of Drugs;

10. current 4th generation immuno assay for HIV, Hepatitis B and Hepatitis C positive test results.

##### **D. Female Contestants**

1. Medical examinations for female contestants will be the same as for male contestants however, the female contestant is subject to the following provisions:

a. the commission may order a pelvic and breast exam by a gynecologist and any evidence of ovarian/uterine/pelvic or breast disease may result in disqualification;

b. a pregnancy test shall be obtained the day before or day of the fight and the results submitted to the commission physician before weigh-in; and

c. the commission physician may request a buccal smear if there is any doubt regarding the contestant's sex.

2. Rounds for female contestants will be two-minute rounds for boxing, or time limits set for championship bouts, up to three minute rounds for MTE exhibition contestants and up to five minute rounds for professional MTE participants.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 36:757 (April 2010), LR 44:

#### **§123. Ringside Physicians**

##### **A. ...**

B. The ringside physician may advise the referee to terminate any contest or exhibition at any time if in the opinion of such physician the health or well-being of any participant would be significantly jeopardized by the continuation of the contest or exhibition. In the event of any serious physical injury, such physician shall immediately render any emergency treatment necessary, recommend further treatment or hospitalization if required, and fully report the entire matter to the commission within 24 hours, and thereafter, as required by the commission. Such physician may also require that the injured participant and his or her manager remain in the ring or on the premises or report to a hospital after the contest for such period of time as such physician deems advisable.

##### **C. ...**

D. Per R.S. 4:70, the services of the physician shall be secured and paid for by the promoter. It shall be the responsibility of promoter to secure the attendance of the physician at the event and the commission shall approve the physician and appoint him to service the event.

E. Each physician approved by the commission shall execute a contract with the LSBWC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:70.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996),



repromulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2003 (August 2005), amended LR 36:757 (April 2010), LR 44:

**§125. Health Insurance**  
**[Formerly §108.B]**

A. The promoter shall provide insurance and pay all deductibles for contestants to cover medical, surgical, and hospital care with a minimum limit of \$20,000 for injuries sustained while participating in a contest and \$50,000 to a contestant's estate if he dies of injuries suffered while participating in a contest. At least 10 calendar days before an event the promoter shall provide to the commission for each event to be conducted, a certificate of insurance showing proper coverage. The promoter shall supply to those participating in the event the proper information for filing a medical claim. The promoter must keep records proving the proper insurance information was filed with contestant and/or medical facility; if promoter fails to provide proof that contestant and/or medical facility has received the insurance information, promoter will bear the burden of paying all costs associated with medical treatment of injured party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64, and R.S. 4:67

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 32:242 (February 2006), amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 34:1601 (August 2008), LR 35:53 (January 2009), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 36:756 (April 2010), LR 36:992 (May 2010), repromulgated LR 36:1242 (June 2010), LR 44:

**§126. Medical Suspensions**  
**[Formerly §108.C]**

A. The commission hereby finds that injuries sustained in the ring by contestants are, pursuant to R.S. 49:961.C, a danger to the public health and injured participants are thereby subject to immediate medical suspension as set forth below.

1. A contestant losing by way of a technical knockout (TKO) resulting from head blows may shall receive a medical suspension of a minimum of 30 days; and may not participate in any sparring for a minimum of 30 days. A contestant losing by way of a knock out (KO) shall receive a medical suspension of a minimum of 60 days and may not participate in any sparring for a minimum period of 60 days. At the discretion of the physician, longer suspension periods may be issued for either the TKO or KO.

2. A ringside physician may issue a medical suspension any time he/she believes it to be in the best interest for the safety of a contestant (i.e., high blood pressure at pre-fight physical). In any/all cases, the decision by the physician to issue or extend a suspension is final.

3. The commission may deny a contestant a license if their license to participate or compete has been denied, refused or disciplined for a medical condition by another state, tribal athletic commission, territory, federal agency or country.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64, and R.S. 4:67

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 32:242 (February 2006), amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 34:1601 (August 2008), LR 35:53 (January 2009), amended by the Office of the Governor,

Boxing and Wrestling Commission, LR 36:756 (April 2010), LR 36:992 (May 2010), repromulgated LR 36:1242 (June 2010), LR 44:

**§129. Tickets and Sale of Tickets**

A. - B. ...

C. Under no circumstances shall a ticket holder be passed through the gate without having the ticket separated from the stub, or be allowed to occupy a seat unless in possession of the ticket stub.

D. The commission may approve the use of roll tickets. No advance sale of roll tickets shall be permitted. Each roll must be numbered and priced according to the color of the roll. The commission or representative of the commission must be informed of the price of the tickets before they can be sold. The starting ticket number of each roll must be recorded by the commission or the commission representative.

E. Promoters shall provide complimentary tickets or official passes to the commission for seating in the safety zone. If necessary, 30 complimentary tickets or passes will be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:73.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), repromulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2004 (August 2005), LR 44:

**§133. Official Weighing In**  
**[Formerly §311]**

A. Contestants shall be weighed within 24 hours of the scheduled match, at a time and place designated by the commission.

B. Each contestant may be weighed in the presence of the public, the other contestant, a representative of the commission and an official representing the promoter, on scales approved by the commission.

C. A contestant must have all weights stripped from his body before he is weighed in, but may wear shorts.

D. This section shall not apply to wrestling events.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

**§135. Permits**  
**[Formerly §117]**

A. Any promoter who wishes to reserve a specific date for a show shall submit the reservation of show date form and the sum of \$250.

B. No date shall be reserved until the \$250 show date fee is received by the Commission.

C. No more than two show dates may be reserved per promoter at one time.

D. The \$250 show date fee is non-refundable and no portion of this fee shall be applied to satisfy any official's fees or tax liability or any other sum owed by the promoter to the Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development,



Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2003 (August 2005), LR 44:

**§137. Event Approval**  
**[Formerly §125]**

A. Before any event will be considered by the Commission, the Promoter must comply with the provisions under §135, Permits herein.

B. Major Event

1. A member of the Louisiana Boxing and Wrestling Commission, including the chairman, may not legally and/or officially authorize and/or give approval to any television network, corporation, limited liability company, promoter, match-maker or any other entity, private or corporate, for any major event date and site selection, without the prior approval of a majority of the commission members voting in favor.

2. *Major Event* in this rule means any boxing, MTE or wrestling (WWE, WWF, etc.) contests that the state of Louisiana authorizes this commission to sanction. Minor local wrestling shows may be excluded from this rule. (Local area commissioners should coordinate these shows through the deputy commissioners and chairman, once they are made aware of such events.)

3. Once a commissioner is contacted by a promoter regarding a major event, he must advise the promoter that a typewritten request on official letterhead must be submitted to the chairman by mail or facsimile. In the request disclosure must be made regarding the venue (television contracts, promoter, matchmaker, number of bouts, bout contracts, arena contracts, sanctioning bodies, ticket information, etc.) After date and site selection is approved, full disclosure of all venue information must be submitted no later than two weeks prior to the event.

C. Once an official request is made, a quorum, according to state statute, must be attained to approve or reject such requests as per state open meeting laws. Emergency meetings will not be deemed necessary, if the time table is such, that the request may be discussed at an upcoming, regular scheduled commission meeting. Requests approved or rejected by quorum in the interim will be noted in the minutes of the next meeting of the commissioners.

D. The commission may demand that all monies relative to any event sanctioned by the commission be placed in escrow in the commission treasury. Monies in this rule means fighters purses and ring officials (referees, timekeepers, inspectors, physicians, judges, etc.) expenses. All ring officials and their pay will be determined by the commission and will be communicated to the promoter. The promoter shall be responsible for and pay all fees of ring officials directly to the commission, and the ring officials will be paid by commission checks the same day or night before the start of the first bout. If the commission required fighters' purses to be placed in escrow then the fighters also will be paid by commission checks, less any expenses due the commission.

1. Ring officials (judges, referees, etc.) for all ring sports under the jurisdiction of this commission will be appointed and/or approved by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D and R.S.4:64.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2004 (August 2005), amended LR 36:757 (April 2010), LR 44:

**§139. Advertising of Contests**

A. No promoter or other individual whether licensed by the commission or not shall advertise an event which has not been approved by the commission.

B. No promoter or other individual whether licensed by the commission or not shall advertise a contestant(s) participation in their show unless and until a signed contract has been executed securing the contestant(s) participation for the date of the event.

C. No promoter, manager or matchmaker or other individual whether licensed by the commission or not shall advertise their affiliation or, legal relationship with or ability to promote a contestant(s) unless and until a signed contract has been executed between that person and the contestant(s) securing the right advertised;

D. No promoter or other individual whether licensed by the commission or not shall advertise using the photo, drawing, video or any other form of likeness of any individual to advertise their show without the express written consent of that individual;

E. Any person advertising an amateur event shall ensure that all advertising concerning the event to be conducted indicates that it is an amateur event, and the word "amateur" must be a large as any other print on the advertisement on a written or printed advertisement and must be announced in any television or radio advertisements and is free from the use of the word "professional"

F. Any person(s) who violates the provisions of this section are subject to immediate and summary denial or cancellation of their show date by the commission, and may be fined or suspended as determined by the commission, and or denial of license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:70.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 44:

**§141. Unauthorized Matchmakers, Promoters, Managers [Formerly §133]**

A. Anyone licensed by or under the authority of the commission who utilizes or conducts any business regulated by this commission with unlicensed matchmakers, promoters or managers or anyone under suspension by this commission shall be subject to fines, suspension or the denial of licenses by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), repromulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2005 (August 2005), LR 44:

**§143. Safety**  
**[Formerly §135]**

A. Licensed clubs shall take all necessary precautions looking toward safety, order and proper behavior.

B. The commission will inspect all cages and rings prior to any events to ensure safety and stability.

C. The commission shall have the right to request from the promoter or the club owner that security personnel be posted at various places designated by the commission in attendance, and, where appropriate may require that that

additional security be provided by the promoter or club owner; and

D. The commission is hereby authorized to delay, suspend or terminate any show where the commission in attendance, commissioner or commission representative reasonably believes the continuation of the show presents an immediate danger to the public, to the commission or its personnel or to the participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), repromulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2005 (August 2005), amended LR 36:757 (April 2010), LR 44:

#### **§145. Safety Zone**

##### **[Formerly §709]**

A. At each event, there shall be an area around the ring or cage extending no less than eight feet as measured from said ring or cage, which shall be partitioned at that distance of eight feet using ropes, fencing, police barriers, bicycle barriers or other emplacements from the public seating and said area shall be referred to as the "safety zone."

1. No one may enter the safety zone unless authorized by the commission.

2. All seating inside of the safety zone shall be authorized only by the commission in attendance; and

3. Anyone entering the safety zone without the authority of the commission may be ejected from the event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Boxing and Wrestling Commission, LR 34:1603 (August 2008), LR 44:

#### **§147. Interference with the Commission**

A. No person attending any event supervised by the commission shall bother, harass, threaten or intimidate the commissioner in attendance or any commissioner or commission personnel.

B. No person attending any event supervised by the commission shall interfere with the commissioner in attendance or any commissioner or commission personnel during the performance of their duties.

C. Any person who violates this provision may at the discretion of the commissioner in attendance or any commissioner or commission personnel be ejected from the event.

D. Any person licensed by the commission who violates this provision may at the discretion of the commission be suspended or fined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:70.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Boxing and Wrestling Commission LR 44:

#### **§149. Contestants Apparel and Physical Appearance**

##### **[Formerly §313]**

A. Contestants must be in commission approved proper athletic attire, specifically for male fighters, including protection cup, which must be securely strapped to the body. The contestants in professional bouts agree to equip themselves with an abdominal guard of standard type

approved by the commission. Female boxing contestants may also wear a breast protector.

B. Each contestant must be clean and present a tidy appearance. The excessive use of grease or any other foreign substance may not be used on the face of a contestant. The referees or commission's representative in charge shall cause any excessive grease or foreign substance to be removed.

C. The commission or representative shall determine whether head or facial hair presents any hazard to the safety of the contestant or his opponent or will interfere with the supervision and conduct of the contest.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

#### **§151. Contestant Age Limits**

##### **[Formerly §305]**

A. No person under 18 years of age, excepting at the age of 16 with notarized consent by legal guardian or parent, shall be permitted to participate in any boxing, wrestling or mixed technique event contest sanctioned by this commission.

B. A 16-year-old contestant shall be limited to four round fights.

C. A 17 year old contestant shall be limited to six round fights.

D. No person 40 years of age or over shall be permitted to participate in any boxing, or mixed technique event contest sanctioned by this commission except under the following circumstances:

1. at their costs, complete the medical examinations, procedures or testing as prescribed below:

a. a complete history and physical examination by a qualified physician; and:

b. a dilated eye exam by a qualified ophthalmologist;

c. a complete neurological examination by a qualified neurologist;

d. a magnetic resonance imaging study to include angiographic analysis of the brain;

e. an electrocardiogram; if in any way abnormal, then an exercise stress test and echocardiogram;

f. a chest X-ray;

g. a complete blood count;

h. a comprehensive metabolic panel;

i. a urinalysis;

j. a urine drug screen; and

k. the already required testing for all fighters, i.e. HIV and Hepatitis B and C testing;

2. provide written confirmation from a duly licensed physician that he is in proper physical condition to compete in the contest proposed;

3. at his costs, complete any future testing required by the commission.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

### **§153. Contractual Agreements; Enforcement by the Commission**

A. Any contestant or manager for a contestant who has entered into a contract with any promoter to participate in a contest who finds that for any reason or cause the contestant will not be able to fully carry out his contract, and does not notify the promoter and the commission of his incapacity and the reason therefor, may be penalized by the commission by a suspension, fine or both.

B. Any promoter who has entered into a contract with any contestant or manager of any contestant to participate in a contest and cancels the proposed match without the knowledge of the contestant, manager and commission, will be subject to a fine in the amount of the purse agreed upon for the match and may be suspended by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 44:

### **§155. Conduct in the Ring**

A. Ring girl contests, musical entertainment and other forms of amusement shall be conducted only during the intermission between the undercard and main event. All national anthems are excluded from this regulation. It shall be understood that all activities carried on within the ring before a match begins and after it is over shall be the sole responsibility of the promoter. Additionally, at no time during an event sanctioned by the commission shall there be music played that contains foul or offensive language, racial or ethnic slurs or sexually explicit content.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 44:

### **§157. Permissible Items in Contestant's Corner [Formerly §319]**

A. A bucket, plastic water bottle, water, sponge, extra mouthpiece, q-tips, surgical gauze, ice bag, scissors and surgical tape may be available in each contestant corner at all times during the contest or exhibition. The only other material which may be present or used at ringside are vaseline, endswell, topical epinephrine 1:1000, avintine and thromblin. There shall be no Vaseline in MTE corner. The ring physician or commission's representative may at any time inspect the items found in the contestant's corner.

B. A towel is permitted in the corner; however, no one shall throw any towel in the ring as a signal of defeat or for any other reason.

C. There shall be no loose ice the corner.

D. Surgical gloves are required to be worn by corner inspectors and referees.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

### **§159. Timekeepers and Corner Inspectors [Formerly §327]**

A. The timekeeper must be seated outside the ring close to the bell/horn. He shall indicate the beginning and ending of each round by striking the bell/horn. He shall provide himself a whistle and a stop watch, which shall have been properly examined and certified as to accuracy before the bout by a commissioner. Ten seconds before the beginning of each round the timekeeper shall give warnings to the seconds of contestant by blowing of the whistle. The timekeeper shall signal by striking a clapper to indicate when only 10 seconds remain in a round.

B. One corner inspector must be in each corner. Contestant's cornermen present will be approved and appointed by the commissioner in attendance to ensure adherence to rules and regulations, whose authority is recognized, and whose directions will be followed by all contestants and cornermen.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

### **§161. Presence in Dressing Rooms [Formerly §347]**

A. No one shall be allowed in the dressing rooms except manager, seconds, contestants or others authorized by commission representatives.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

### **§163. Seconds [Formerly §341]**

A. Each second must have a current license from the commission before assisting a contestant in the ring. The chief second is responsible for the conduct of all seconds and violations of the commission's rules by any second may be punished by fine, suspensions or both. A manager of a contestant may act as chief second when holding a current license issued by the commission to act as a manager of a contestant.

B. In all boxing bouts not more than three seconds shall attend or assist a contestant, only one second is allowed in the ring. When the timekeeper notifies the referee that the round will begin in 10 seconds the referee shall order "seconds out." Seconds shall leave the ring promptly and clear it of corner equipment.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D), R.S. 4:64 and R.S. 4:78.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

#### **§165. Bell**

##### **[Formerly §323]**

A. The promoter shall be responsible for providing a bell of sufficient size, that when struck by the timekeeper, to be clearly audible by participants, officials, and spectators. The bell shall be approved by the commission.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

### **Chapter 3. Professional Boxing**

#### **§301. Commission Demands**

Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

#### **§303. Amateur Boxing Associations**

A. ...

B. An amateur boxing contest or exhibition is governed by the rules adopted for amateur boxing contests or exhibitions by United States Amateur Boxing, Inc. The commission hereby adopts by reference those rules as they Amateur Boxing, Inc. A copy of those rules may be purchased from United States Amateur Boxing, Inc., One Olympic Plaza, Colorado Springs, Colorado 80909. If those rules do not cover a particular situation in an amateur boxing contest or exhibition, the provisions of this Chapter concerning unarmed combat and professional boxing contests or exhibitions apply.

C. Despite the two forgoing sections, any person who competes in a boxing match without headgear is declared to be a professional boxer by the commission and will be treated as a professional under these rules and shall be licensed and promoted as a professional under this Chapter and under R.S. 4:61, et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by Department of Economic Development, Boxing and Wrestling Commission, LR 34:1601 (August 2008), LR 44:

#### **§305. Limitations on Contestants**

A. The commission may require boxers to observe a 7-day rest period after competing in an event. Day one of the rest period shall commence on the first day following the event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 44:

#### **§307. Weight Classes, Weight Differences, and Glove Weights**

A. No contest may be scheduled and no contestants may engage in a boxing contest without the approval of the commission or the commission's representative if the difference in weight between contestants exceed the allowance shown in the following schedule or if a glove's weight is deemed to be insufficient in any manner. Regardless of the weights set forth below all female fighters shall use 10 oz. gloves, unless the bout is a championship event or the commission approves a different glove weight.

Weight Class	Weight Difference Allowance	Glove Weight
Mini Flyweight (up to and including 108 pounds)	not more than 3 pounds	8 oz.
Flyweight (over 108 to 111 pounds)	not more than 3 pounds	8 oz.
Bantamweights (over 112 to 118pounds)	not more than 3 pounds	8 oz.
Featherweights (over 119 to 126 pounds)	not more than 3 pounds	8 oz.
Jr. Lightweight (over 127 to 130 pounds)	not more than 4 pounds	8 oz.
Lightweight (over 131 to 135 pounds)	not more than 5 pounds	8 oz.
Jr. Welterweight (over 136 to 140 pounds)	not more than 5 pounds	8 oz.
Welterweight (over 141 to 147 pounds)	not more than 7 pounds	8 oz.
Jr. Middleweight (over 148 to 154 pounds)	not more than 7 pounds	10 oz.
Middleweight (over 155 to 160 pounds)	not more than 7 pounds	10 oz.
Super Middleweight (over 161 to 168 pounds)	not more than 7 pounds	10 oz.
Light Heavyweight (over 169 to 175 pounds)	not more than 7 pounds	10 oz.
Cruiserweight (over 176 to 190 pounds)	not more than 12 pounds	10 oz.
Heavyweight (over 190 pounds)	no limit	10 oz.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 36:757 (April 2010), LR 44:

#### **§309. Hand Wraps**

##### **[Formerly §313.D]**

A. Bandages may not exceed one winding of surgeon's adhesive tape, over 1 1/2 inches wide, placed directly on the hand to protect the part of the hand near the wrists. The tape may cross the back of the hand twice but may not extend within 1 inch of the knuckles when the hand is clenched to make a fist. Each contestant shall use soft surgical bandage not over 2 inches wide held in place by not more than 6 feet of surgeon's adhesive tape for each hand. Up to 15 yards of bandage may be used to complete the wrappings for each hand. Strips of tape may be used between the fingers to hold down the bandages. Bandages must be applied in the dressing room in the presence of a representative of the

commission. Either contestant or his representative may witness the bandaging of his opponent's hands.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

### **§311. Judges and Referees** **[Formerly §315]**

#### **A. Referees**

1. The commission is authorized to grant referee licenses to a competent officials upon application and investigation.

2. A licensed referee must be in attendance at every exhibition and shall work in such bouts as directed by the commission. The referee, subject to the approval of the commission, has the power in his discretion to declare forfeited all or any part of the purse of any contestant who, in the referee's judgment, is not contesting in good faith.

3. Before starting each bout the referee shall ascertain the name of the chief second in each corner and shall hold the chief second responsible for all conduct in the corner.

4. No licensed referee or other club official shall act as a promoter for an organization or as a manager for any contestant. The referee or referees are to be appointed by the commission and the commission must approve their compensation in advance. The referee is charged with the enforcement of all rules and regulations of the commission which apply to the execution of performance and the conduct of boxers in the ring.

5. Before the start of each bout the referee shall call the contestants together for final instructions, at which time each contestant shall be accompanied by his chief second only, except in the case of a boxer who also requires the services of an interpreter. After receiving the referee's instructions, the boxers shall shake hands and return to their corners to await the gong for the first round.

#### **B. Judges**

1. The commission shall appoint three judges to officiate at each contest or exhibition, except exhibitions conducted solely for training or instruction purposes.

2. Judges shall be stationed at separate sides of the ring as directed by the commission and shall observe carefully and expertly the performance of the contestants in each contest or exhibition to which they are appointed; to appraise each such contest or exhibition fairly and accurately in the light of these rules and the generally recognized rules of boxing; to inscribe the results of such appraisal after each round on the commission scorecard according to the scoring system adopted by the commission; and to deliver said score cards to the referee or to such other official as designated by the commission.

C. The referee is the sole arbiter of a bout and is the only individual authorized to stop a contest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D. R.S. 4:64 and R.S. 4:79.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2005 (August 2005), LR 44:

### **§317. Bout Judging and Procedures**

#### **A. Scoring**

1. All boxing contests and exhibitions shall be scored by three judges. Judges shall score all contests and determine the winner through the use of 10 point must system. In this system the winner of each round receives 10 points and the opponent a proportionately less number. If the round is even, each boxer receives 10 points. No fraction of points may be given. In each round judges shall score on 4 factors in the following order:

#### **B. Knockdown**

1. A contestant shall be deemed "down" when:

- a. clean hits;
- b. effective aggressiveness;
- c. defense;
- d. ring generalship.

2. In the event a boxer has been knocked down, the referee shall order the boxer's opponent to the farthest neutral corner, and the opponent shall remain there. Should the opponent refuse to do so, or leave the farthest neutral corner, the referee may stop counting. Upon compliance by the opponent, however, the referee shall continue counting where he left off.

3. After having been knocked down, the fighter must get up unassisted within 10 seconds. The referee shall count off the seconds. If the contestant attempts to get up, and goes back down, the count shall be continued by the referee where he left off. If the contestant fails to get to his feet by the count of 10 the referee shall declare a knockout and the contest will end. In every round including the last round of a bout, should a boxer be down at the time the bell rings ending the round, the count shall continue until the boxer gets up or is counted out.

#### **C. Boxer out of the Ring**

1. If a contestant, who has fallen out of the ring during a contest, fails to return immediately, the referee shall count him out as if he were "down" allowing 20 seconds.

2. Should a contestant leave the ring during the one-minute period between rounds, and fail to be in the ring when gong rings to resume boxing, the referee shall declare his opponent the winner.

#### **D. Answering the Bell**

1. Should a contestant finish any one round of a contest and fail to answer the bell for the succeeding round for any one of numerous reasons, such as cuts, injuries or admission of overwhelming superiority, the proper termination of the bout is by a technical knockout in the round for which he fails to answer the bell. For instance, both contestants have finished Round 6. One of them fails to answer the bell for Round 7, or indicates to the referee that he will not answer the bell. It is a "TKO-7."

E. There is no standing eight count.

F. There is no three knockdown rule.

G. When a boxer loses his mouthpiece, the referee shall call time as soon as possible and instruct such boxer's seconds to promptly wash or replace such boxer's mouthpiece and re-install same. If a referee determines that a boxer has deliberately spit out his mouthpiece for any reason, the referee shall issue a warning for the first such infraction and instruct the judges at the end of the round following a second such infraction to deduct one point from their scores for such boxer for that round. A boxer may be disqualified for deliberately

spitting out his mouthpiece for the third time in any one round and his opponent declared the winner.

H. At the end of each round, each judge shall mark his or her scorecard in ink or indelible pencil with the score of each boxer in such round, and shall deliver the scorecard to the referee, who shall in turn deliver the scorecard of all judges to the commission.

I. At the conclusion of a contest or exhibition, except a contest or exhibition which has been concluded by knockout, technical knockout or disqualification, the commission shall tally the total points awarded to each participant and inform the announcer of the decision of the three judges.

J. The announcer shall announce the decision of the judges from the ring, and in the main events, the announcer shall call out the total points awarded by each judge. The boxer who has more points on the scorecard of the official is the winner on that judge's scorecard. The boxer who has been awarded the decision on at least two of the three judge's scorecard is the winner of the bout. In the event that neither boxer has been awarded the decision on at least two of the three judge's scorecard the decision shall be a draw, majority draw and all other possibilities.

K. If the referee or the commission decides, at any time, that either contestant did not enter into the contest in good faith, or if the commission or referee discovers, at any time, that either or both contestants are not performing their part in good faith, or is guilty of any foul tactic, or of faking, or of violating any rule of the commission, the referee or commission may stop the contest.

L. The chief second may forfeit the contest by stepping up onto the ring apron during any round and signaling the referee. If the chief second steps up on the apron before the round is ended the contest is immediately forfeited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S.4:64, R.S. 4:76 and R.S. 4:79.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2005 (August 2005), LR 44:

### **§320. Boxing Ring and Ropes**

A. The boxing ring shall not be less than 16 feet nor more than 24 feet square within the ropes. The ring floor must extend at least 18 inches beyond the ropes. The ring floor must be padded with ensolite not less than 1 inch in thickness. Padding must extend beyond the ring ropes and over the edge of the platform, with a top covering of canvas, tightly stretched and laced to the ring platform. Material that tends to gather in lumps or ridges must not be used. The ring platform shall be approximately 4 feet above the floor of the building, and shall be provided with suitable steps for use of contestants. Ring post shall be of metal, not more than 4 inches in diameter, extending from the floor of the building to a height of 58 inches above the ring floor. Corners shall have protective padding extending from the top to the bottom rope.

B. ...

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64. Amended 2018

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

### **§321. Fouls, Deductions of Points Because of a Foul and Accidental Fouling**

A. - I.3.b. ...

4. A fighter who is hit with an accidental low blow must continue after a reasonable amount of time but no more than five minutes or he/she will lose the fight.

J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), amended by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2006 (August 2005), LR 36:758 (April 2010), LR 44:

### **§322. Gloves**

A. - B. ...

C. Gloves for preliminary events shall be of the same brand and style. If gloves used in preliminary bouts have been used before, they shall be whole, clean, in sanitary condition and subject to inspection by the referee or commission representative as to condition. Any such gloves found to be unfit shall be immediately discarded and replaced with gloves meeting the above requirements.

D. ...

E. Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

### **§325. Promoters and Matchmakers [Formerly §329]**

A. Each promoter at the time of promoting any contest or exhibition must have a current license issued by the commission. Before acting upon any application for a license, the commission may in its discretion examine under oath the applicant and other witnesses.

B. At the time of submitting a match for approval, promoters of professional boxing contest or exhibition shall submit to the commission a fight card consisting of 28 rounds of three minutes each, but not less than six contests (exclusive of female boxers which are two-minute rounds) plus the national record keeping authorities approved by the commission of the proposed boxers in said match, including the last six. Matches will not be considered unless this is done. This rule applies specifically to visiting boxers who have not previously performed in Louisiana.

C. No person connected with the promotion of professional boxing may have anything to do with the management of boxers; and no persons involved in professional boxing as managers, boxers, trainers or seconds, shall have anything to do with the promotion of such bouts. A licensed promoter may not act as a matchmaker. A professional contest or exhibition may not be arranged on behalf of any promoter except by a licensed matchmaker.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development,

Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

**§327. Withholding**  
**[Formerly §339]**

A. If a match is stopped by the commission, or its representative in charge, for infraction of the rules or for a violation of any law or ordinance, the promoter shall hold all box office receipts and remuneration for contestants for said match pending the decision of the commission.

B. The commission may cause the promoter to hold the purse of any contestant who, through violation of the rules and regulations of this Chapter; and/or Title 4:61 et seq., affected or attempted to affect the outcome of any contest.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

**§331. Announcer**  
Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

**§333. Manager**  
Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

**§335. Compensation of Officials**  
Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 31:2007 (August 2005), LR 44:

**§345. Termination of Bouts**  
Repealed.

AUTHORITY NOTE: Adopted in accordance with R.S. 4:61(D) and R.S. 4:64.

HISTORICAL NOTE: Adopted by the Department of Commerce, Boxing and Wrestling Commission 1967, amended 1974, amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 22:697 (August 1996), LR 44:

**Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a no impact on family functioning, stability or autonomy as described in R.S. 49:972.

**Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family

poverty in relation to individual or community asset development as described in R.S. 49:973.

**Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service and no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

**Public Comments**

All interested persons are invited to submit written comments, views or positions, on this proposed Rule, in writing to John Green, Jr., Secretary, Louisiana State Boxing and Wrestling Commission, 1135 Hodges St., Lake Charles, LA 70601 within 20 days of publication.

Anthony "Buddy" Embanato  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**  
**RULE TITLE: Boxing and Wrestling Standards**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no anticipated implementation costs or savings to state or local governmental units as a result of the proposed rule change.

The proposed rule change modifies and establishes new rules including, but not limited to the following: ringside physician requirements, health insurance requirements, advertising requirements, interference with the commission, conduct in the ring, and limitations on contestants. It further incorporates current language in statute into the commission's administrative code as well as removes and revises language in order to reflect current practices. Lastly; it removes duplicative language from multiple chapters and reestablishes the rules in the general section for organizational purposes.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There may be an increase in revenues to the extent fines are collected, however the impact is expected to be nominal. The proposed rule establishes new rules where fines may be levied if the commission determines there has been a violation regarding the advertising of contests (Section 139) and interference with a commissioner or commission personnel attending an event (Section 147).

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Event promoters licensed by the commission will be impacted by the proposed rule changes. Promoters will now be required to carry health insurance for injuries or death with minimum limits of \$20,000/\$50,000 (the current limit is \$10,000/\$10,000), which is estimated to increase costs \$684 per event.

Additionally, if it is decided additional security is necessary, event promoters will be responsible for the costs. The average cost of security officials in the state is \$40 per hour per 100 attendants where alcohol is served. It is unknown how many times this will have to be exercised.

Lastly, event promoters will now be required to utilize ensolite mats, which cost \$3 to \$6 per square foot and vary

depending upon the thickness, and are slightly more expensive than the mats that are currently allowed. If promoters are not currently using ensolite mats, they will have an increase in costs, however the exact impact is indeterminable depending on the type of ensolite mat that is purchased and the quantity. Promoters have the ability to rent these mats out to other events in order to recoup the costs.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There may be an effect on employment as a result of the proposed rule change.

Physicians must now be approved by the commission which may affect current participants and/or increase employment opportunities for others. Additionally, if it is determined additional security personnel will be needed at an event; the promoter will be required to hire security, which will lead to additional employment opportunities.

Addie L. Fields  
Administrative Assistant  
1809#016

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Office of the Governor State Licensing Board for Contractors

Contractors (LAC XXIX.Chapters 1-7)

In accordance with the provisions of R.S. 49:950 et seq., which is the Administrative Procedure Act, and through the authority granted in R.S. 37:2150 - 2192, which is the Contractor Licensing Law, the Licensing Board for Contractors (LSLBC) hereby gives notice of its intent to update its rules and regulations regarding contracting matters under the jurisdiction of the LSLBC.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part XXIX. Contractors

#### Chapter 1. Applications and Licensing

##### §101. Authority

A. These rules and regulations are enacted under the authority of and in accordance with R.S. 37:2153 and 37:2184.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, State Licensing Board for Contractors, LR 44:

##### §103. Definitions

A. As used in these rules and regulations, words and phrases shall be defined as provided in R.S. 37:2150.1, in R.S. 37:2150-2192, and as otherwise defined in these Rules and Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, State Licensing Board for Contractors, LR 44:

##### §105. Requirements

##### [Formerly §301 and §1503]

A. Before a license or registration may be issued in accordance with the Contractors Licensing Law, all applications for a license or registration shall contain the information required on the forms which are available on the board's website or at the offices of the Licensing Board for

Contractors. Licensure or registration cannot be considered until the following minimum conditions are met:

1. the application is complete and all required information provided to the board;
2. all applicable fees, fines, or other sums due to the board are paid in full; and
3. all examination or other eligibility requirements have been successfully completed.

B. Any person holding a license or registration as a residential contractor, residential specialty contractor, home improvement contractor, and mold remediation contractor, including labor only, shall obtain and maintain workers' compensation and general liability insurance, obtained from an insurer authorized to sell those forms of insurance coverage in the state. Insurance certificates evidencing current workers' compensation and general liability insurance shall be submitted to the Licensing Board for Contractors with each new application and every renewal application. In the event of a lapse of insurance coverage, a cease and desist order may be issued and such lapse shall be grounds for suspension or revocation of the license at a disciplinary hearing by the board.

C. The issuance of any licenses or registrations will be approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150 - 2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 1:401 (September 1975), amended LR 3:11 (January 1977), LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 22:94 (February, 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:150 (January 2012), LR 44:

##### §107. Report of Changes

##### [Formerly §105]

A. It shall be the responsibility of a person licensed or registered by the board to provide to the board all of the following information upon application for a license or registration and to notify the board in writing within 15 days of any change to the following information:

1. the licensee's type of business structure (sole proprietorship, partnership, limited liability company, corporation, etc.);
2. the licensee's business address (physical and U.S. postal service mailing address);
3. a telephone, cell phone and facsimile number;
4. the licensee's email address;
5. the licensee's name;
6. the identity and address of the licensee's registered agent;
7. the identity of each officer and the office held;
8. the identity or address of each partner; and



9. the identity or address of each member.

B. The failure of a person licensed or registered by the board to notify the board of changes to any of the enumerated items in Paragraph A within 15 days of the change may result in disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:

**§109. Qualifying Party**  
**[Formerly §501]**

A. Any licensee may have more than one qualifying party. Nothing in the law is to be construed so as to prohibit a licensee from having more than one qualifying party per trade.

B. If a qualifying party for a particular trade terminates employment or ownership/membership with a licensee, the licensee's license remains valid and the licensee may bid on new work in the licensed trade classification, but the licensee must submit and qualify a new qualifying party before commencing any new work.

C. A qualifying party shall be required to successfully complete any trade examinations, and complete the business and law course and any other eligibility requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012), LR 44:

**§110. Reliance upon Exemption**  
**Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), repealed LR 44:

**§111. Authorized to Take Examination**  
**[Formerly §503]**

A.1. The qualifying party or parties authorized to take the examination are:

- a. a sole proprietor or spouse of a sole proprietor (individual);
- b. any partner (partnership);
- c. any original stockholder or incorporator (corporation);
- d. any member (limited liability company); or
- e. any employee of said applicant who has been in full-time employment for 120 consecutive days immediately preceding the examination.

2. The employee shall be required to complete a qualifying party application furnished by the board before examination attesting to his/her eligibility that he/she has been a full-time employee of the person for whom he/she is seeking to qualify working at least 32 hours per week for the preceding 120 consecutive days and that he/she meet the criteria to be classified as an *employee* as defined by the Internal Revenue Service. The qualifying party application

will be signed and certified by both the employee/qualifying party and employer.

B. An employee who has not been in full-time employment for 120 consecutive days immediately preceding the application due to an absence resulting from deployment in active military service may be considered as a full-time employee if the employee has been re-employed in accordance with R.S. 29:410 and, considering the employee's period of employment immediately preceding the absence resulting from deployment in active military service, the employee otherwise satisfies the requirement of full-time employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153(A).

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1127 (September 1993), LR 23:1495 (November 1997), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012), LR 44:

**§113. Disassociation of a Qualifying Party**  
**[Formerly §103]**

A. When a qualifying party's employment or association with the licensee is terminated for any reason, the licensee shall notify the board in writing within 30 days of the termination. The licensee shall submit and qualify a new person as its qualifying party within 60 days of the termination of the prior qualifying party. If the licensee fails to qualify a new qualifying party within 60 days as required herein, the licensee's license may be suspended or revoked by the board.

B. It is a violation of R.S. 37:2158 to fail to notify the board of the disassociation or termination of a qualifying party and may subject the licensee to disciplinary proceedings by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:

**§115. Exemption from Examination**  
**[Formerly §509]**

A. A qualifying party may be exempt from taking another examination for the same classification he has previously passed.

B. Proof of plumbing work, including a plumbing license or permit, will be insufficient to exempt an applicant from the examination required for a mechanical contractor's license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:136 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012), LR 40:2576 (December 2014), LR 44:

**§117. Examination Scheduling**  
**[Formerly §515]**

A. A qualifying party candidate who has been approved to take an examination shall be given a means to register for the examination.

B. A candidate who fails to appear on the scheduled examination date and time shall forfeit the examination fee and be required to submit a new fee before candidate will be allowed to schedule a new examination date.

C. A candidate who fails an examination cannot retake the examination for 30 days and only if all other eligibility requirements have been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, State Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012), LR 40:2576 (December 2014), LR 44:

**§119. Examination Administration Procedures**  
**[Formerly §513 and §517]**

A. Administrative check-in procedures begin one-half hour before the examinations begin. Candidates must report to the testing center for processing at least 15 minutes prior to the examination's starting time. Any candidate reporting after the 15-minute starting time may not be allowed admittance to the examination room. Every candidate must present acceptable government-issued photographic identification to be admitted to the examination room.

B. Personal items (e.g., telephones, pagers, calculators, purses, briefcases, etc.) shall not be allowed in the testing room. A candidate shall not have access to these items during examination administration. Anyone found using unauthorized code books, text books, pagers, beepers, cellular telephones, tape recorders, radio transmitters, portable scanning devices, cameras, portable photocopy machines, reference materials, notes, blank writing or note paper, or any other aid or electronic device not specifically provided by the Examination Section for the purpose of examination administration shall have his or her examination confiscated, the exam results invalidated, and shall have his or her name placed on the agenda for the board's next regularly scheduled meeting for consideration and appropriate action. Failure to appear before the board shall result in the imposition of a one year waiting period before the applicant may retake the examination(s).

C. It is the policy of the board that the specific contents of its examinations are considered to be proprietary and confidential. Anyone found in possession of examination questions, answers, or drawings in whole or in part shall have his or her examination confiscated, the exam results invalidated, shall be barred from taking any other examination, and shall not be eligible to become a qualifying party for the licensee for a period of one year. A candidate wearing bulky clothing or attire which would facilitate concealment of prohibited materials shall be requested to leave said clothing or attire outside the examination room or to remove it and place it in the front of the examination room. Failure to remove the article shall constitute permission to search for contraband materials, or a forfeiture of the scheduled examination will occur.

D. All examination activities are subject to being filmed, recorded, or monitored.

E. A candidate taking an examination shall not be allowed access to telephones or other communication devices during the course of the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012), LR 40:2576 (December 2014), LR 44:

**§121. Test Item Challenges**  
**[Formerly §519]**

A. A candidate who believes that an individual test item may not have a correct answer or may have more than one correct answer shall be afforded an opportunity to challenge the test item. The candidate shall record his or her comments in writing on a form supplied by the test monitor at the candidate's request during the examination. Comments will not be accepted at any other time. Comments should provide a detailed explanation as to why the candidate feels the item is incorrect. General comments (e.g., "This item is wrong.") will not be investigated.

B. Examination comments will be reviewed by board staff.

C. If a test item comment is deemed to be valid, the grade may be changed based upon test item comment(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012), LR 40:2576 (December 2014), LR 44:

**§123. Examination Reviews**  
**[Formerly §521]**

A. A Candidate may request a review of their examination after two unsuccessful attempts to pass the same examination, provided the last test score is within ten points of a passing grade. The request must be made in writing within 60 days of the failed examination date. Only questions missed by the qualifying party may be reviewed. Standard security procedures will be observed at review sessions. Candidates who have reviewed an examination are not eligible to retake the same examination for 14 days after the review session. Candidates who fail to appear for a scheduled review session are disqualified from reviewing that examination at a future date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 21:1215 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012), LR 44:

**§125. Application of Subsidiary**  
**[Formerly §309]**

A. Any application for a license for a subsidiary shall be considered as a new application and subject to all laws and rules and regulations governing a new application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2154.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012), LR 44:

**§127. Approval Withheld  
[Formerly §317]**

A. If the board withholds approval of an application for a license or registration, the applicant shall have the right to apply to the board for a hearing to consider the application. After due consideration of the applicant's presentation to the board, the board shall be entitled to withhold approval or grant approval of the application after consideration of the licensing requirements of the Contractors Licensing Law and these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153 and R.S. 37:2157(D).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended LR 11:341 (April 1985), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012), LR 44:

**§129. Licensure for Individuals with Military Training and Experience, and Military Spouses  
[Formerly §321]**

A. The board shall issue a license or registration to a military-trained applicant to allow the applicant to lawfully act as a person licensed or registered by the board in this state if, upon application to the board, the applicant satisfies all of the following conditions:

1. has completed a military program of training, been awarded a military occupational specialty, and performed in that specialty, and performed in that specialty at a level that is substantially equivalent to or exceeds the requirements for licensure or registration by the board in this state;

2. has engaged in the active practice of contracting in the classification or subclassification for which a license or registration is sought;

3. has not been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a contractor's license or registration in this state at the time the act was committed.

B. The board shall issue a license or registration to a military trained applicant, if, upon application to the board, the applicant holds a current license, certification, or registration from another jurisdiction and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure or registration in this state.

C. The board shall issue a license or registration to a military spouse to allow the military spouse to act as a contractor in this state if, upon application to the board, the military spouse satisfies all of the following conditions:

1. holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification or registration are substantially equivalent to or exceed the requirements for licensure or registration in this state;

2. can demonstrate competency to act as a contractor through methods determined by the board such as, but not limited to, having completed continuing education units or having had recent experience in the classification or subclassification for which a license or registration is being sought;

3. has not been disciplined in any jurisdiction for an act that would have constituted grounds for refusal, suspension, or revocation of a license or registration to act as a contractor in this state at the time the act was committed;

4. is in good standing and has not been disciplined by the agency that issued the license, certification, or permit.

D. The board shall issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure or registration, if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure or registration in this state. The military-trained applicant or military spouse may practice under the temporary permit until a license or registration is granted, or until a notice to deny a license or registration is issued in accordance with §717.

E. The provisions of this Section shall not apply to any applicant receiving a dishonorable discharge or a military spouse whose spouse received a dishonorable discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2156.3.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 40:2575 (December 2014), LR 44:

**§131. Ownership of License  
[Formerly §307]**

A. The license for which a person becomes the qualifying party belongs to the licensee, a corporate license belongs to the corporation; a partnership license belongs to the partnership; a limited liability company license belongs to the limited liability company, and an individual license belongs to the individual, regardless of the status of the qualifying party of the entity.

B. A domestic business entity licensed or registered by the board as a limited liability company, business corporation, partnership in commendam, or partnership, that converts under the provisions of R.S. 12:1601 et seq., or is a surviving entity following a merger pursuant to 26 U.S.C. 368(a)(1)(f) where ownership of the entity does not change, shall be recognized by the board without having to file a new application for a license or registration. However, prior to updating a license or registration of the converted entity or surviving entity, the converted entity or surviving entity must furnish the following information to the board:

1. a copy of the conversion application or act of merger filed with the Secretary of State;

2. a copy of the certificate of conversion or certificate of merger issued by the Secretary of State;

3. the current license or registration issued by the board;

4. a copy of the revised certificate(s) of insurance in the new name of the converted entity or surviving entity for any coverage required for the issuance of the updated license or registration; and

5. any revised contract or other agreement required for the issuance of the license or registration in the name of the converted entity or surviving entity.

C. An updated license or registration issued pursuant to Subsection B of this Section shall have an effective date

retroactive to the effective date of the conversion as stated on the certificate of conversion, or the merger as stated on the certificate of merger.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153 and R.S. 12:1308.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:136 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:150 (January 2012), LR 40:2575 (December 2014), LR 44:

### **§133. Name**

#### **[Formerly §109]**

A. A person licensed or registered by the board shall bid, contract, and perform work in the name as it appears on the current license or registration and the official records of the Licensing Board for Contractors.

B. If a person licensed or registered by the board enters into a contract with or assigns a contract, or any portion of a contract, for which a license is required to another person, the person to which it is assigned and who performs the work must possess the appropriate current license or registration issued by the board. No unlicensed person shall be permitted to assign a contract, or any portion of a contract, in an amount for which a license is required to a person licensed or registered with the board in circumvention of the Contractors Licensing Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:

### **§135 Contractor's Recordkeeping**

#### **[Formerly §101]**

A. It shall be the responsibility of each person licensed or registered by the board to maintain current records showing compliance with the licensure requirements for all contracts, subcontracts and subcontractors performing work or providing services on a construction project. Upon request by the board or any employee of the board, such records shall be made available for review and/or copies provided to the board employee in person or by electronic means. The failure to maintain current records or the failure to furnish copies of requested records within 72 hours after receipt of notice requesting production of the records shall constitute a violation of this rule and may result in disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:135 (March 1982), amended LR 12:761 (November 1986), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:601 (July 1990), LR 19:1125 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:

### **§137. Fee for Licenses**

#### **[Formerly §1301]**

A. The annual fee for licenses for the following year may be set by the board at its July meeting each year. If a new fee

is not set, the fee(s) for the prior year shall continue to be in full force and effect until changed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 2:271 (September 1976), amended LR 8:136 (March 1982), LR 10:199 (March 1984), LR 11:341 (April 1985), LR 12:761 (November 1986), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), LR 44:

### **Chapter 3. Classifications**

#### **§301. Major Classification**

##### **[Formerly §117]**

A. Any contractor possessing a major classification is permitted to bid or perform any of the specialty type work listed under its respective major classification in R.S. 37:2156.2 or any other work that might not be listed which is directly related to the major classification it may hold as long as it is not prohibited by any rule, except as provided in R.S. 37:2156.2(A)(IX)(B), (C), and (D).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2164.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Licensing Board for Contractors, LR 11:340 (April 1985), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:

#### **§303. Additional Classifications**

##### **[Formerly §505]**

A. A licensed contractor may add additional classifications to his license at any time provided:

1. the request for additional classification(s) is in writing;

2. a completed and notarized qualifying party application form is submitted pursuant to R.S. 37:2156.1(D)(1); and

3. the required additional fees are paid and the qualifying party successfully passes the examination or meets other eligibility requirements.

B. The addition of classifications to a license will be approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:136 (March 1982), amended LR 11:341 (April 1985), LR 12:760 (November 1986), amended by the Department of Economic Development, Licensing Board for Contractors, LR 16:602 (July 1990), LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:152 (January 2012), LR 44:

#### **§305. Electrical or Mechanical Work**

##### **[Formerly §1113]**

A. Any person bidding on or performing a job for which a license is required, the majority of which job is classified as V. Electrical Work or VI. Mechanical Work, the licensee shall hold the major classification or subdivision thereunder of electrical work or mechanical work as the case may be.

B. On all jobs involving mechanical or electrical work, the board shall consider the monetary value of the electrical or mechanical material and/or equipment furnished by the

owner or builder, if any, in determining the amount of electrical or mechanical work involved.

C. The board takes cognizance of all local ordinances and codes regulating the licensing of electrical and mechanical contractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2159 and 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), LR 44:

### **§307. Joint Venture**

#### **[Formerly §1103.C]**

A. When two or more persons bid as a joint venture on any project in the amount for which a license is required from the board, all parties to the joint venture are required to be licensed by the board at the time the bid is submitted. The joint venture may only perform work within the applicable classifications of the work for which the parties to the joint venture are properly licensed to perform.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Licensing Board for Contractors, LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), LR 40:2577 (December 2014), LR 44:

### **§309. Construction Management**

#### **[Formerly §119]**

A.1. Any person who performs, attempts to perform, or submits a price, bid or offer to perform work in construction management or program management whose scope of authority and responsibility includes supervision, oversight, direction, or in any manner assuming charge of the construction services provided to an owner by a contractor or contractors, in which the value of the construction project is:

a. in excess of \$50,000 for a commercial construction project must possess a license from this board in the major classification of building construction, heavy construction, highway, street, and bridge construction or municipal and public works construction or

b. in excess of \$75,000 for a residential construction project must possess a license from this board in the classification of residential building contractor. Any licensed contractor with any of these major classifications shall be able to bid and perform any such project specified for construction and/or program management within the scope of the classification(s) they hold.

2. If a construction or program manager whose scope of authority and responsibilities does not include any of the above stated tasks, and who does not subcontract actual construction work, that construction or program manager does not need a contractor's license.

B. Any person who violates the provisions of this section may be subject to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 41:536 (March 2015) amended, LR 44:

### **§311. Solar Energy Equipment**

#### **[Formerly §319]**

A. Any person applying for the classification of solar energy equipment, must, in addition to all other application or licensing requirements, meet the following requirements prior to issuance of this classification:

1. hold one or more of the following major classifications:

- a. building construction;
- b. electrical work;
- c. mechanical work;
- d. residential building contractor;

2. complete training in the design of solar energy equipment by an entity and course approved by the board;

3. pass a written examination approved by the Licensing Board for Contractors on the installation and maintenance of solar energy equipment.

a. Any contractor licensed by the board as of August 1, 2014, holding the major classification of building construction, electrical work (statewide) and/or mechanical work (statewide) shall be deemed to have satisfied the examination requirement.

b. An applicant who holds a current solar pv installer certification for solar electric systems or a current solar heating installer certification for solar thermal hot water systems issued by the North American Board of Certified Energy Practitioners shall be deemed to have satisfied both this examination requirement and the training requirement in §311.A.2.

B. Any work performed to connect wiring or hookups for any photovoltaic panel or system wherein the panel or system is of a value, including labor, materials, rentals, and all direct and indirect project expenses of \$10,000 or more shall be performed only by a contractor or subcontractor who holds the classification of electrical work or who may perform electrical work under the provisions of R.S. 37:2156.2A(IX)(B).

C. Any work performed to connect piping or equipment for any solar thermal system wherein the system is of a value, including labor, materials, rentals, and all direct and indirect project expenses of \$10,000 or more shall be performed only by a contractor or subcontractor who holds the classification of mechanical work or who may perform mechanical work under the provisions of R.S. 37:2156.2A(IX)(B).

D. Entities engaging in the business of selling or leasing solar energy equipment wherein such entities enter into agreements for installing, servicing, or monitoring solar energy equipment, including entities engaged in the business of arranging agreements for the lease or sale of solar energy systems or acquiring customers for financing entities, must possess a state contractor's license with the classification of solar energy equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2156.3.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 40:2575 (December 2014), amended LR 44:

**§313. Division of Contract—Value of Project**  
**[Formerly §1109]**

A. In determining the value of a project, any division of a contract into parts which would avoid the necessity of a license to bid for, contract for, or perform the work, will be disregarded, and the parts of the contract will be treated as one contract totaling the amount of these parts when combined.

B. For the purpose of determining a scope of work, the board should review whether the contract or contracts in question constitute a single scope of work or whether they constitute separate scopes of work. The board may be guided in this interpretation by a review of the drawings, plot plans, blueprints, architectural plans, site maps, technical drawings, engineering designs, sketches, diagrams, black lines, blue lines, drafts or other renderings depicting the total scope of work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), LR 44:

**§315. License Revocation and Suspension**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012), repealed LR 44:

**§317. Approval Withheld**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153 and R.S. 37:2157(D).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended LR 11:341 (April 1985), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012), repealed LR 44:

**§319. Solar Energy Equipment**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2156.3.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 40:2575 (December 2014), repealed LR 44:

**§321. Licensure for Individuals with Military Training and Experience, and Military Spouses**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2156.3.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 40:2575 (December 2014), repealed LR 44:

**Chapter 5. Residential and Home Improvement**

**§501. Definitions**

**[Formerly §1501]**

A. Any person bidding or performing the work of a general contractor on a residential project in the amount for

which a license is required must be licensed under the classification *residential building contractor*. This requirement shall not include individuals who build no more than one residence per year for their own personal use as their principal residence.

B. Any residential building contractor is permitted to bid or perform any of the specialty type work listed under its respective major classification in Section 503.

C. “Cost of a project” or “value” of a project or work includes the value of all labor, materials, subcontractors, general overhead and supervision. With respect to modular housing, “cost of the project” shall not include the cost of the component parts of the modular home in the condition each part leaves the factory, in accordance with R.S. 40:1730.71.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 22:94 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), LR 44:

**§503. Residential Specialty Classifications**  
**[Formerly §1515]**

A. Any person that is not a licensed residential contractor who, offers to perform, performs, or provides a bid to perform or superintend the following work for a price or fee where the value of the work performed or offered to be performed exceeds \$7,500 including labor and material as it relates to new residential construction of any building or structure that is not more than three floors in height, to be used by another as a residence, is required to obtain a specialty classification license from the board for that work if the work includes one of the following:

1. residential pile driving
2. residential foundations
3. residential framing
4. residential roofing
5. residential masonry/stucco

B. Any person who seeks to obtain a license for one of the above specialty classifications must, in addition to all other application or licensing requirements, designate a qualifying party who must successfully complete the trade exam for the respective specialty and complete the business and law course.

C. Any person who violates the provisions of this section may be subject to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 42:52 (January 2016), amended LR 44:

**§505. Residential Labor Only**  
**[Formerly §1517]**

A. In lieu of obtaining a residential specialty classification required under §503, a person who provides labor only and does not supply materials may obtain a subcontract-labor-only specialty classification for work performed under the direct supervision of a licensed residential building contractor. To obtain such a specialty classification, the subcontractor must:

1. complete and submit the application prescribed by the board for the subcontract-labor-only specialty classification;

2. submit an affidavit (on the form prescribed by the board for the subcontract-labor-only specialty classification) that is executed by a licensed residential building contractor who holds at least one contract with the subcontractor and attests to the subcontractor's quality of work and character; and

3. completes the business and law course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 42:52 (January 2016), amended LR 44:

**§507. Residential Swimming Pools Licensing**

A. Any person that is not licensed in building construction or in the swimming pools subclassification of building construction who, offers to perform, performs, or provides a bid to perform work for the construction of a residential swimming pool on property where a building or structure that is not more than three floors in height may be or has been constructed and is intended to be used or is being used as a residence and where the value of the swimming pool construction work exceeds \$7,500, including labor and materials, is required to obtain a license for the residential specialty classification entitled residential swimming pools. Persons holding a Residential Construction license may provide a bid, provide pricing, or enter into a contract to construct a residential swimming pool but cannot perform the swimming pool construction work for a residential swimming pool until first obtaining a license from the board for the residential specialty entitled residential swimming pools.

B. Any person who seeks to obtain a residential specialty license for the construction of residential swimming pools must, in addition to all other application or licensing requirements, designate a qualifying party who must successfully complete the trade exam for the respective specialty and complete the business and law course.

C. Any person who violates the provisions of this section may be subject to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 42:52 (January 2016), amended LR 44:

**§509. Home Improvement Registration**  
**[Formerly §1511]**

A. Home improvement contractors are required to register with the board in order to perform services when the value of work exceeds \$7,500 but does not exceed \$75,000. Contractors who hold valid commercial or residential licenses with the board are exempt from this registration requirement. Home improvement contractors are required to submit

certificates evidencing workers' compensation coverage in compliance with Title 23 of the *Louisiana Revised Statutes* of 1950 and proof of general liability insurance in a minimum amount of \$100,000 at the time of application and renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:813 (March 2012), amended LR 40:2577 (December 2014), LR 44:

**§511. New Home Warranty Act**  
**[Formerly §1513]**

A. Pursuant to R.S. 9:3145, a residential contractor shall give the owner written notice of the requirements of the New Home Warranty Act.

B. Failure to provide such written notice shall be grounds for the residential subcommittee to suspend or revoke the license of the contractor who failed to provide the required notice, subject to the final approval of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:813 (March 2012), amended LR 44:

**§513. Maintenance of Skills**  
**[Formerly §113]**

A. As provided by R.S. 37:2150 after granting said license, the licensee shall at all times show its ability to serve the public economically, expediently and properly; shall possess the necessary qualifications of responsibility, skill, experience and integrity so that the licensee will not tear down standards of construction established within the industry, and shall continue to maintain the qualifications established in R.S. 37:2156.1.

B. A residential building contractor shall be required to complete a minimum of six hours of continuing education annually by a board approved provider. The residential building contractor shall maintain a copy of a certificate of completion for five years and make the certificate available to the board upon request. A contractor who holds a residential building contractor license and a valid, current license in the major classifications of building construction; highway, street and bridge construction; heavy construction; or municipal and public works construction, shall be exempt from this continuing education requirement.

C. A residential building contractor who fails to complete the minimum required continuing education classes each year may subject the residential building contractor's license to disciplinary action including suspension or revocation by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:150 (January 2012), LR 40:2574 (December 2014), LR 44:

**§515. Examination Scheduling**  
**Repealed.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, State Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor,

Licensing Board for Contractors, LR 38:153 (January 2012), LR 40:2576 (December 2014), repealed LR 44:

#### **§517. Examination Administration Procedures**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012), LR 40:2576 (December 2014), repealed LR 44:

#### **§519. Test Item Challenges**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 21:1214 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:153 (January 2012), LR 40:2576 (December 2014), repealed LR 44:

#### **§521. Examination Reviews Prohibited**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 21:1215 (November 1995), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012), repealed LR 44:

### **Chapter 7. Enforcement and Hearings**

#### **§701. Enforcement of Act and Rules**

##### **[Formerly §107]**

A. The board, pursuant to R.S. 37:2158 and R.S. 37:2161, may bring suit to enjoin violations of the Contractors Licensing Law and these rules and regulations. The executive director and/or his designated agent and/or the legal counsel for the board is hereby authorized to institute such suit on behalf of the board, to sign the verification of any petition, and to take any actions necessary in connection with the institution of such legal proceedings as directed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:

#### **§703. Correction without Complaint**

##### **[Formerly §111]**

A. If a possible violation is known to the board, the board may correct it or take appropriate action without formal complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:149 (January 2012), LR 44:

#### **§705. Failure to Insure or Bond**

##### **[Formerly §111]**

A. Whenever a person licensed by the board bids a project within the scope of this act and is awarded the contract, the refusal or inability of the person licensed by the board to

provide bonding and insurance coverage as required by the bid proposal, may be grounds for a finding of a violation of §513.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), LR 44:

#### **§707. Bankruptcy**

##### **[Formerly §115]**

A. It shall be the responsibility of any person licensed or registered by the board who, voluntarily or involuntarily, is subjected to any provision of the laws of bankruptcy, to notify this board immediately and to make available to this board any and all information pertinent thereto.

B. Any person licensed or registered by the board who is ordered by a competent court to cease operations or whose operations are closed due to operation of any law, shall notify this board immediately and make available to this board any and all information pertinent thereto.

C. If a person licensed or registered by the board is ordered by a competent court to pay a final and executory judgment awarded against the licensed or registered person in the operation of the licensed or registered business, resulting from a claim arising out of the operation of the licensed or registered business, and fails to pay said judgment upon its becoming final and executory, a hearing may be scheduled by the board for the purpose of disciplining the licensee or registrant in accordance with the provisions of the Contractors Licensing Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:138 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:150 (January 2012), LR 44:

#### **§709. License Revocation and Suspension**

##### **[Formerly §315]**

A. Any person duly licensed or registered under the provisions of the Contractors Licensing Law who violates any provisions of the Contractors Licensing Law or any rule or regulation of the board may, after due hearing, be required to pay fines and costs and have its license or registration suspended or revoked by the board. Prior to the board's action on suspension or revocation of licenses as aforesaid, the person licensed or registered by the board shall be given a hearing in accordance with §717 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.



HISTORICAL NOTE: Promulgated by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1126 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:151 (January 2012), LR 44:

**§711. Subcontractor License; Default**  
**[Formerly §903]**

A. It shall be a violation for any person licensed or registered by the board, owner, awarding authority, or any other person to contract or subcontract all or any portion of work to any other person unless said person was duly licensed by the board as of the final date fixed for the submission of bids on said work from the primary contractor to the owner or awarding authority. This rule shall be subject to the provisions and limitations established by R.S. 37:2156(B) and (D).

B. If work is subcontracted as per this rule, and the subcontractor should default for any reason, the awarding authority shall have the right to take bids from any person that is properly licensed by the board at the time of the default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012), LR 44:

**§713. Residential Subcommittee Review**  
**[Formerly §1507]**

A. The Licensing Board for Contractors Residential Subcommittee has the authority to conduct hearings on alleged violations by residential building contractors, residential specialty contractors, mold remediation contractors and home improvement contractors in accordance with the provisions of R.S. 37:2158.

B. The Licensing Board for Contractors Residential Subcommittee shall make recommendations to the Contractors Board regarding their findings and determinations as a result of the hearings on said alleged violations.

C. Any person licensed as a residential building contractor, residential specialty contractor, home improvement contractor, or mold remediation contractor whose alleged violations were heard by the subcommittee and a recommendation rendered, may request to appear at the next regularly scheduled board meeting or at any other board meeting where their alleged violations are brought before the board for final action, and may be given an opportunity to address the board regarding the subcommittee's recommendation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 22:95 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012), LR 44:

**§715. Penalties**  
**[Formerly §1509]**

A. The residential subcommittee has the authority to issue, suspend, or revoke residential licenses or registrations issued to a residential building contractor and residential specialty contractor subject to the final approval of the Licensing Board for Contractors.

B. In accordance with the provisions of R.S. 37:2162, the subcommittee shall have the authority to issue a fine not to exceed ten percent of the total contract being performed for each violation, for the causes listed in R.S. 37:2158, subject to final approval by the Licensing Board for Contractors.

C. In addition to or in lieu of any of the penalties provided in this Chapter, the subcommittee is empowered to issue a cease and desist order. Further, the subcommittee may seek the other civil remedies provided in R.S. 37:2162 for violations of this Chapter, subject to the final approval of the Licensing Board for Contractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 22:95 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012), LR 40:2577 (December 2014), LR 44:

**§717. Hearings**  
**[Formerly §701]**

A. Hearings regarding any disciplinary proceedings or any other matters to be considered by the board may be conducted by the board's legal counsel at regular or special meetings whenever deemed necessary and special hearing officers may be hired at the board's discretion. Hearings shall be conducted in accordance with the Administrative Procedure Act.

B. Written notice of the hearing date shall be given to a party who is the subject of a disciplinary proceeding or other matter before the board at least five days prior to such hearings or special meetings. The board members shall be notified at least three days prior to such hearings or special meetings. The notice shall include the time, place and purpose of the hearing or special meeting and may be held at any place within the state.

C. Confirmation of the written notice to a party who is subject to a disciplinary proceeding or other matter before the board required by this Section may be proved by any one of the following:

1. a signed return receipt of certified or registered mail, confirming delivery and receipt of the notice;
2. a signed confirmation by a board employee that actual physical delivery was made to the party, contractor, or agent of the contractor delivered to the address provided to the board by the party or contractor;
3. a confirmation of facsimile transmission to the number provided to the board by the party or contractor;
4. a copy of notice by electronic transmission to the electronic address provided to the board by the party or contractor;

5. a printed electronic confirmation of delivery to the party or contractor and/or confirmation of signature from the U.S. Postal Service;

6. a written, electronic, or facsimile response to the notice or subpoena provided therewith, from the party, contractor or its representative; or

7. appearance by the party, contractor or its authorized representative at the hearing.

D. As authorized by R.S. 49:962, the board may hear and decide petitions for declaratory orders and rulings as to the applicability of any statutory authority or of any rule or order of the board. Such orders and rulings shall have the same status as board decisions or orders in adjudicated cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 4:69 (March 1978), LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1127 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012), LR 44:

## **Chapter 9. Subcontractors**

### **§901. Subcontractors**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012), repealed LR 44:

### **§903. Subcontractor License; Default**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Licensing Board for Contractors, LR 8:138 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:154 (January 2012), repealed LR 44:

## **Chapter 11. Bidding**

### **§1103. Proper Classification**Error! Bookmark not defined.

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Licensing Board for Contractors, LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), LR 40:2577 (December 2014), repealed LR 44:

### **§1109. Division of Contract**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), repealed LR 44:

### **§1111. Failure to Insure or Bond**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), repealed LR 44:

### **§1113. Electrical or Mechanical Work**Error! Bookmark not defined.

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2159 and 37:2153.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 8:137 (March 1982), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), repealed LR 44:

## **Chapter 13. Fees**

### **§1301. Fee for Licenses**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Adopted by the Department of Commerce, Licensing Board for Contractors, November 1974, amended and promulgated LR 2:271 (September 1976), amended LR 8:136 (March 1982), LR 10:199 (March 1984), LR 11:341 (April 1985), LR 12:761 (November 1986), amended by the Department of Economic Development, Licensing Board for Contractors, LR 19:1128 (September 1993), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), repealed LR 44:

## **Chapter 15. Residential**

### **§1501. Definitions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 22:94 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:155 (January 2012), repealed LR 44:

### **§1503. Requirements**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 22:94 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012), repealed LR 44:

### **§1505. Exceptions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 22:94 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012), LR 40:2577 (December 2014), repealed LR 44:

### **§1507. Violations**Error! Bookmark not defined.

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 22:95 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012), repealed LR 44:

### **§1509. Penalties**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Licensing Board for Contractors, LR 22:95 (February 1996), amended by the Office of the Governor, Licensing Board for Contractors, LR 38:156 (January 2012), LR 40:2577 (December 2014), repealed LR 44:

#### **§1511. Home Improvement Registration**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:813 (March 2012), amended LR 40:2577 (December 2014), repealed LR 44:

#### **§1513. New Home Warranty Act**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:813 (March 2012), repealed LR 44:

#### **§1515. Specialty Classifications**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 42:52 (January 2016), repealed LR 44:

#### **§1517. Labor Only**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 42:52 (January 2016), repealed LR 44:

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that changes to the Rules of the State Licensing Board for Contractors will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of the changes to the rules have been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Small Business Analysis**

The proposed changes to the rules will have a minimal impact on small businesses, and will ease the application and renewal processes for contractors licensed with this agency.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has

been considered. It is anticipated that this proposed Rule will have no known impact on providers of services for individuals with developmental disabilities.

#### **Public Comments**

Interested persons may submit written comments on the proposed regulations to the Licensing Board for Contractors, attention Judy Dupuy, Board Administrator, 2525 Quail Drive, Baton Rouge, LA 70808 through October 10, 2018 at 4:30 p.m.

#### **Public Hearing**

If it becomes necessary to convene a public hearing to receive comments, in accordance with the Administrative Procedures Act, a hearing will be held October 25, 2018 at 9:30 a.m. at the Louisiana State Licensing Board for Contractors at 2525 Quail Drive, Baton Rouge, LA 70808.

Michael McDuff  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Contractors**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no anticipated implementation costs or savings to state or local governmental units as a result of the proposed rule change.

The purpose of the proposed rule change is to align the board's administrative code with statutes and codify current practices. Additionally, it alters certain requirements for individuals authorized to take trade examinations and the business and law course; and education requirements for qualifying parties and residential-labor-only individuals.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no anticipated impact on revenue collections of state or local governmental units as a result of the proposed rule change.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Contractors will be impacted by the proposed rule change. The proposed rule change will now allow any member of an LLC to be authorized to take trade examinations and the business and law course as opposed to original members only. Qualifying parties and residential-labor-only individuals will now be required to complete the business and law course in lieu of the business and law exam, however the fee will remain the same. Additionally, to the extent individuals are found in violation of the board's administrative code, they may be subject to disciplinary actions including license suspension or revocation by the board.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

There may be an effect on competition and employment as a result of the proposed rule change. Any member of a limited liability corporation will now be authorized to take the examination, which could lead to more opportunities for both the company and the individual.

Judy Dupuy  
Board Administrator  
1809#023

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health Board of Examiners of Psychologists

Continuing Education Requirements, Exemptions and Fees  
(LAC 46:LXIII.601, 603, 803, 805, 811, 905 and 4001)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Examiners of Psychologists intends to adopt Section 905 and amend Sections 601, 603, 803, 805, 811, and 4001 related to continuing education requirements, exemptions and fees for Licensed Psychologists and Licensed Specialists in School Psychology in accordance with the Louisiana Licensing Law for Psychologist 37:2353.C(1) 37:2357.C(4), 37:2354, 37:2357, and the Administrative Procedure Act §968 and 971.

#### Title 37

### OCCUPATIONAL AND PROFESSIONAL STANDARDS

#### Part LXIII. Psychologists

##### Subpart 1. General Provisions

#### Chapter 6. Fees

##### §601. Licensing Fees

Licensing Fees	Amount
Application for Licensure	\$200
Application for Provisional Licensure	200
Application for Temporary Registration	125
Jurisprudence Examination Fee	75
oral examination (Licensure, specialty change or additional specialty)	250
License Renewal Psychologist	350
License Renewal Fee for Psychologists Qualifying under R.S. 37:2354.E. for a reduced rate	175
License Renewal Provisional Licensed Psychologist	100
License Renewal Psychologist Emeritus	75
Reinstatement of Lapsed License (Application plus renewal fee)	550
Processing Fees for Paper Renewals	15
License Renewal Extension Request	25

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2354.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 33:648 (April 2007), amended LR 39:311 (February 2013), amended LR 41:2618 (December 2015), amended LR 44:

##### §603. Administrative/Other Fees.

Administrative/Other Fees	Amount
Address List/Labels	\$100
License Verification	15
Disciplinary Action Report	25
Replacement Renewal Certificate	15
Replacement License Certificate	25
Miscellaneous Copy Fee (other records)	\$1 page one, \$.25 each page thereafter
Application for Approval of Continuing Professional Development Workshop/Conference	\$50
Application for Renewal of Continuing Professional Development Workshop/Conference	\$25

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2354.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 33:648 (April 2007), amended LR 39:311 (February 2013), amended LR 41:2618 (December 2015), amended LR 44:

#### Chapter 8. Continuing Education

##### §803. Requirements

A. Each psychologist is required to complete 40 hours of CPD within the biennial reporting period prescribed which begins on July 1<sup>st</sup> and ends June 30<sup>th</sup>. The activities are to be reported on such form and in such manner as prescribed by the board in order to fulfill the requirements for license renewal.

B. A psychologist shall obtain the required hours within any of the nine categories as defined under Subsection E, not exceeding the limitations defined therein.

C. Within each reporting period, two of the required hours of continuing professional development must be within the area of ethics or law. This requirement may be fulfilled only through a “traditional approved sponsored continuing education” activity as defined under Subsection E of this section.

D. If requested, a psychologist shall provide the required documentation as defined under Subsection E of this Section, as proof of completion of the activities claimed for credit.

E. Licensees can accumulate continuing professional development hours in the categories defined.

1. Traditional Approved Sponsored Continuing Education—workshops from a recognized approved sponsor under Subsection 805.A of this Chapter. Regardless of the mode of delivery (conferences/conventions, in-person workshops, online workshops, formal reading awarded credit by an approved sponsor) any activity with an approved sponsor under Subsection 808.A of this Chapter is classified under this category. There is no limitation to the number of hours claimed under this category.

a. One hour equals one credit.

b. Documentation required to earn credit shall be the certificate or award of completion from sponsor.

2. Consultation and Supervision—acceptable consultation is regularly scheduled interactions with colleagues, in a structured and organized format. Examples include case consultation groups, journal clubs, research groups, and shadowing a colleague. Acceptable supervision is one-to-one general professional, specific case discussion, or skill training that is provided under Chapter 7 of this Part by a qualified supervisor.

a. One hour of acceptable consultation or supervision equals one hour of credit.

b. Documentation required to earn credit shall be a verification form providing evidence that it is a structured program of consultation with regularly scheduled meetings and showing the nature of the consultation, or in the case of supervision the supervised practice plan approved by the board; and

c. The person providing the consultation, or facilitating the case consultation group, must attest, by signature, to the description of the program, number of hours met and that the verification form has been completed.

3. Practice Outcome Monitoring—assessing patient/client outcomes via questionnaire(s) that is appropriate to the practice endeavor.

a. One client equals one hour of credit per reporting period.

b. Documentation required to earn credit shall be a verification form and a de-identified copy of the patient/client questionnaire.

4. Professional Activities—serving on a national, regional, or state psychological association board or committee; or board member of regulatory body related to the field of psychology. Professional activities shall not include lobbying activities.

a. One year equals 10 hours of credits.

b. Documentation required to earn credit shall be a verification form and documentation from the professional organization confirming the service.

5. Conferences/Conventions Attendance—this credit is separate and may be counted in addition to the “traditional approved sponsored continuing education” that may be awarded at said conference. Acceptable credit will be granted for registered attendance at a conference related to the field of psychology or a conference, which aids in the licensee’s professional development.

a. One conference day equals one hour of credit.

b. Documentation required to earn credit shall include a copy of certificate of attendance.

6. Academic Courses—graduate-level course related to psychologist’s discipline and practice taken for credit from a regionally accredited university or one pre-approved by the board.

a. One three-hour course or equivalent equals 20 hours of credit.

b. One registered audit, documented by the university, equals five hours of credit.

c. Documentation required to earn credit shall include course transcript.

7. Instruction—preparation and teaching a semester long graduate or undergraduate course, related to psychology, in a regionally accredited institution; or continuing education workshop presentation.

a. Credit can only be received the first time teaching or presenting the material.

b. Credit hours for preparing and teaching a workshop shall be calculated at four times the credit granted attendees, divided by the number of presenters.

c. Credit hours for teaching a university course shall be calculated at 10 times the number of credit hours awarded the students.

d. Documentation required to earn credit shall be the course syllabus or brochure.

8. Publications—author of an article for peer-reviewed publications or author, editor or co-editor of a book/book chapter related to the field of psychology.

a. One article equals 10 hours; one book/book chapter equals 10 credit hours.

b. Documentation required to earn credit shall include a copy of journal abstract or a copy of the publication.

9. Self-directed Learning—examples include informal reading, internet, videos, and/or other activities that are not sponsored by an entity defined under Subsection 805.A of this Chapter.

a. All self-directed learning activities shall be limited to 10 credits.

b. One hour equals one credit.

c. Self-directed learning activities must meet the objectives under Subsection 801.A of this Chapter.

d. Documentation required to earn credit shall include the completion of the continuing professional development verification form provided by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 16:770 (September 1990), amended LR 19:46 (January 1993), LR 32:1228 (July 2006), LR 39:2754 (October 2013), amended by the Department of Health, Board of Examiners of Psychologists, LR 42:1662 (October 2016), amended LR 44:

### **§805. Acceptable Sponsorship, Offerings and Activities**

A. The board will recognize the following as acceptable sponsors of the continuing education requirements, provided their offerings meet criteria set forth in §801:

1. - 7. ...

B. The board may endorse a specific continuing education program as an Approved Sponsored CPD if the sponsor:

1. Files a completed Continuing Education Program Application, which will demonstrate that the proposed program meets the board’s requirements;

2. Pays an application fee of \$50;

C. The approval of the program pursuant to Subsection B of this S subsection shall permit the sponsor to offer the program one time. The sponsor shall submit a request for renewal and a \$25 renewal fee for each subsequent request to offer the same approved program.

D. The board will only accept applications for review if they are submitted by the sponsoring entity.

E. Approved sponsors listed under this Chapter are not required to obtain additional approval under this section in order to offer continuing professional development to psychologists; however, those entities may not advertise the activity as a board approved activity or purport that the activity has been approved for or otherwise meets the CPD requirements of the board.

F. Only the activities approved via application, under this Section, may advertise and state approval or endorsement on brochures and certificates by the Louisiana State Board of Examiners of Psychologists.

G. The board, in considering the acceptability of a CPD activity will determine if the activity meets the objectives and sponsorship defined by the board under Subsection 801.A of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 16:770 (September 1990), amended LR 19:46 (January 1993), LR 22:1131 (November 1996), LR 25:1098 (June 1999), LR 32:1228 (July 2006), LR 36:1007 (May 2010), amended by the Department of Health, Board of Examiners of Psychologists, LR 42:1663 (October 2016), amended LR 44:

### **§811. Extensions/Exemptions**

A. - C. ...

D. Licensees who meet the requirements for a reduced fee under R.S. 37:2354.E during the applicable reporting period and who are fully retired from the practice of psychology may be granted an exemption from continuing professional development requirements if the board receives a timely written application for such exemption.

1. A licensee granted an exemption under this provision shall be recognized as a psychologist emeritus.

2. A licensee granted emeritus status under this provision shall be prohibited from engaging in the practice of psychology; rendering psychological services in any form; and/or engaging in any activity that might be construed as the practice of psychology within the state of Louisiana.

3. A psychologist emeritus is eligible to renew their emeritus status license provided they submit such renewal application along with the annual renewal fee at the reduced rate established under Chapter 6 of this Part; and are fully retired from the practice of psychology, not rendering psychological services in any form, and are not engaging in any activity that might be construed as the practice of psychology within the state of Louisiana.

4. A psychologist emeritus is eligible to reinstate their status to licensed psychologist and resume the independent practice of psychology in Louisiana upon submission of a reinstatement application for licensure including the required reinstatement fee and fulfillment of all continuing professional development requirements as defined under this Chapter, provided they are not in violation of any of the provisions of the *Louisiana Revised Statutes*, Title 37 Chapter 28, Psychologists.

5. A psychologist emeritus returning to full practice after five or more years shall be subject to an oral examination prior to reinstatement to the status licensed psychologist.

6. A licensee who renews their emeritus status shall be exempt from continuing professional development requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2354.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 19:47 (January 1993), amended LR 32:1229 (July 2006), LR 39:2755 (October 2013), LR 41:2617 (December 2015), amended by the Department of Health, Board of Examiners of Psychologists, LR 42:1664 (October 2016), amended LR 44:

## **Chapter 9. Licensees**

### **§905. Psychologist Emeritus**

A. A psychologist emeritus is eligible to renew their current license under this status until July 31 of each year upon submission of the required renewal fee and renewal application form.

B. A psychologist emeritus is eligible to reinstate their status to licensed psychologist and resume the practice of psychology upon submission of the required renewal fee, renewal application form and fulfillment of all continuing education requirements as defined in LAC 46:LXIII. Chapter 8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Examiners of Psychologists, LR 44:

## **Subpart 2. Licensed Specialists in School Psychology**

### **Chapter 40. Continuing Education Requirements of Licensed Specialist in School Psychology**

#### **§4001. General Requirements**

A.1. Pursuant to R.S. 37:2357 each licensed specialist in school psychology is required to complete continuing education hours within biennial reporting periods prescribed by the board. Continuing education is an ongoing process

consisting of learning activities that increase professional development.

a. Each licensed specialist in school psychology is required to complete 40 hours of credit of continuing education within the biennial reporting period which begins July 1st and ends June 30th.

b. Two of the above 40 hours of credit of continuing education must be in the areas of ethics or law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 41:2625 (December 2015); amended LR 44:

#### **Family Impact Statement**

The Board of Examiners of Psychologists hereby issues this Family Impact Statement as set forth in R.S. 49:972. The proposed Rule related to the licensing fees imposed by this agency are not anticipated to have an impact on the stability of the family; authority and rights of parents regarding the education and supervision of their children; functioning of the family; behavior and personal responsibility of children as it relates to promptly facilitating the licensure of qualified professionals who may work with families and families of school aged children to promote their health, education and well-being; family earnings and family budget; or the ability of the family or a local government to perform the function as contained in the proposed rule.

#### **Poverty Impact Statement**

The proposed modifications impact psychologists, provisionally licensed psychologists, and specialist in school psychology in the interest of the health, safety and the welfare of the public. This Rule does not have any known or foreseeable negative impact on any child, individual or family as defined by R.S. 49:973.B. Specifically, there is no known or foreseeable effect on: household income, assets, and financial security; early childhood development and preschool through postsecondary education development; employment and workforce development; taxes and tax credits; or, child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### **Provider Impact Statement**

The proposed Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. Specifically, there is no known or foreseeable effect on: the staffing level requirements or qualifications required to provide the same level of service; the total direct or indirect cost to the providers to provide the same level of service; or the overall ability of the provider to provide the same level of service.

## Public Comments

Interested persons may submit written comments to Jaime T. Monic, Executive Director, 8706 Jefferson Highway, Suite B, Baton Rouge, LA 70809. All comments must be submitted by 12 noon on October 10, 2018.

Jaime T. Monic  
Executive Director

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Continuing Education Requirements, Exemptions and Fees

### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes will result in a one-time publication expense of \$1,500 for the LA State Board of Examiners of Psychologists (LSBEP) in FY 19.

The proposed rule changes may result in a nominal expenditure increase for the LSBEP, as they include a new, optional process of reviewing and approving continuing professional development workshops and conferences. The potential nominal expenditure increase is associated with increased postage costs for correspondence, though these costs may be mitigated through the use of electronic communications. However, any expenditures the LSBEP incurs associated with the review and approval of continuing education workshops/will be absorbed and/or defrayed by new fees included in the proposed rule changes (see Part II).

The proposed rule changes clarify continuing education requirements for licensed psychologists and specialists in school psychology; provide a framework for the aforementioned option review and approval of continuing education workshops/conferences; and create an emeritus license status for licensees of the LSBEP.

### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will have an indeterminable net effect on SGR collections for the LSBEP. Included in the proposed rule changes are new fees for an emeritus status license (\$75 annually) for LSBEP licensees, as well as new fees for the optional approval (\$50) and approval renewal (\$25) of continuing professional development workshops and conferences. The aggregate net effect of the aforementioned fees is dependent upon the number of entities seeking approval of their workshops/conferences, as well as the individual activity of persons licensed by the LSBEP (see below).

The revenue increase associated with the new fees for workshop/conference reviews and approvals is indeterminable because the number of entities that will seek such approval is unknown. However, any revenues raised from entities seeking workshop/conference approval will be used to defray any costs associated with reviewing the workshop/conference (see Part I).

Furthermore, the net effect on revenues associated with the new emeritus license status is dependent upon retired licensees either maintaining an active license at a cost of \$175 annually without practicing, or lapse their license. In the former case, the LSBEP would realize reduced revenues of \$100 per license. However, in the latter case, the LSBEP would realize increased revenues of \$75 per license. The net effect on revenues as a result of adding the emeritus license status fee is therefore indeterminable because it is dependent upon the behavior of each individual licensee, which cannot be predicted.

### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes benefit LSBEP licensees, as they clarify requirements and qualifying courses for continuing education requirements.

The proposed rule changes create a new emeritus status for licensees, which may benefit retired licensees to the extent they maintain an active license but do not practice. Persons holding an emeritus license would realize a savings of \$100 annually in the aforementioned case, and would be able to revert to an active license if desired after meeting continuing education requirements and paying all associated fees.

The proposed rule changes may benefit entities that host continuing professional development events, as they may now submit their materials for an optional LSBEP review and endorsement as a qualifying continuing education event for board licensees. However, entities seeking such endorsement must submit a \$50 fee for initial review and a \$25 fee for subsequent course reviews.

### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Entities who seek and receive optional approval of their workshop/conference from the LSBEP may gain competitively over those that do not seek such approval. However, the aggregate effect on competition is unknown and dependent upon LSBEP licensees seeking approved courses in lieu of those that are not approved.

The proposed rule changes are not anticipated to affect employment.

Jamie Monic  
Executive Director  
1809#037

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health Board of Examiners of Psychologists

Training, Credentials and Scope of Practice  
for Neuropsychology Specialty Designation and  
Provisional Licensure; other technical corrections  
(LAC 46:LXIII.105, 107, 307, 709, 1002, 1701 and 1702)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Examiners of Psychologists intends to amend Section 307 related to training and credentials for neuropsychology; amend §§105 and 709 and adopt section 107 related to provisional licenses; and, amend sections 1002, 1701, 1702, to correct an outdated statutory reference to the definition of "Practice of psychology". in accordance with the Louisiana Licensing Law for Psychologist 37:2353.C(1) 37:2357.C(4), 37:2352(7), and the Administrative Procedures Act §968 and 971.

## Title 37

### OCCUPATIONAL AND PROFESSIONAL STANDARDS

#### Part LXIII. Psychologists

#### Subpart 1. General Provisions

#### Chapter 1. Definitions

#### §105. Definition of Candidate for Licensure

A. - A.2. ...

B. A provisional licensee may be admitted to candidacy, and therefore may take the required written examination, prior to completion of the two years of full-time supervised and documented postdoctoral experience, which is required for licensure and as defined in the rules and regulations of the board, or prior to expiration of the provisional license.

C. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 5:248 (August 1979), amended by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 41:2618 (December 2015), amended LR 44:

#### **§107. Definition, scope and limitations: Provisional Licensed Psychologist**

A. Provisional licensed psychologist meets the criteria of the R.S.37:2356.2 and therefore may practice psychology as defined under R.S. 37:2352(7) under the supervision of a licensed psychologist.

B. A provisional license is required for admittance to the written examination for licensure prior to completing the final year of postdoctoral supervision

C. A provisional license may be renewed no more than three times.

D. Provisional licensed psychologists may not:

1. contract directly with individuals, couples, families, agencies or institutions for clinical services, consultation, supervision or educational services; or

2. claim to be independently licensed or in private practice.

E. Provisional Licensed Psychologists:

1. must practice psychology under the supervision of a licensed psychologist or medical psychologist in accordance with the requirements of Chapter 7 of this Part;

2. shall use the title "provisional licensed psychologist";

3. shall disclose supervisory relationships to clients or patients for whom supervision is required, and to third parties when relevant;

4. shall not supervise other mental health professionals or independently evaluate persons;

5. may bill for psychological services through the licensed psychologist/medical psychologist or employing agency.

F. The supervising licensed psychologist, medical psychologist, agency, hospital or corporation who employs the supervising licensed psychologist may bill for psychological services performed by the provisional licensed psychologist.

G. The termination of the supervisory relationship must be immediately reported to the board. The provisional licensed psychologist may not practice under these provisions until an approved supervisory relationship is established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353 and R.S. 37:2356.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Examiners of Psychologists, LR 44:

### **Chapter 3. Training and Credentials**

#### **§307. Clinical Neuropsychology**

A. - B.4. ...

5. These regulations recognize the overlapping roles in certain aspects of clinical neuropsychological assessment and

intervention of other professionals, such as behavioral neurologists, speech pathologists, and learning disability specialists, and are not meant to constrain or limit the practice of those individuals as affirmatively set forth in their relevant enabling statutes. These regulations are not meant to constrain or limit the practice of licensed psychologists who through education, training, and experience have acquired competence in the use of psychological assessment instruments that measure various aspects of function to include but not limited to general intelligence, complex attention, executive function, learning and memory, language, perceptual motor and social cognition.

C. - C.1.c. ...

- d. specialty internship in clinical neuropsychology (one year minimum), followed by the completion of one year of post-doctoral supervised experience in clinical neuropsychology; or, the equivalent of two full years (4,000 hours) of post-doctoral experience in clinical neuropsychology under the supervision of a qualified clinical neuropsychologist (as defined here and in LAC 46:LXIII.307.C.2, 3 and 4). The majority of these hours must involve clinical neuropsychological assessment, and some portion of the remaining hours should be related to rehabilitation of neuropsychological deficits. The supervision, as defined above, should involve a minimum of one hour of face-to-face supervision a week, through additional supervisory contact may be required during training phases and case discussions.

1.e. - 2.c. ...

- d. In addition to whatever remedial didactic training is necessary, the candidate for respecialization in clinical neuropsychology, will complete either a formal, two year post-doctoral fellowship training program, or the equivalent of two full years (4,000 hours) of supervised experience in clinical neuropsychology as defined in LAC 46:LXIII.307.C.1.d.

2.e. - 3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353 and R.S. 37:2356.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 19:1323 (October 1993), amended LR 36:1006 (May 2010), amended LR 44:

### **Chapter 7. Supervised Practice Leading toward Licensure**

#### **§709. Conduct of Supervision**

A. ...

B. The licensed psychologist or medical psychologist who provides supervision for the candidate for licensure or the provisional licensed psychologist must have legal functioning authority over and professional responsibility for the work of the supervisee. This means that the supervisor must be available to the supervisee at the point of decision making. The supervisor's relationship with the supervisee shall be clearly differentiated from that of the consultant, who may be called in at the discretion of the consultee and who has no functional authority for, nor none of the legal or professional accountability for the services performed or for the welfare of the client.



C. - C.2. ...

3. Billing and receipt of payment for the services performed by the supervisee or provisional licensed psychologist is the responsibility of the employing agency or the licensed psychologist/medical psychologist. The setting and the psychological work performed shall be clearly identified as that of the licensed psychologist. The physical location where services are delivered may not be owned, leased, or rented by the supervisee.

C.4. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 5:249 (August 1979), amended, LR 7:187 (April 1981); amended LR 41:2619 (December 2015), amended LR 44:

## **Chapter 10. Temporary Registration**

### **§1002. Emergency Temporary Registration for Psychologists**

A. Pursuant to R.S. 29:769(E), licensed psychologists from other jurisdictions of the United States may respond to a declared public health emergency and be granted a temporary registration to engage in the practice of psychology as defined in R.S. 37:2352(7).

B. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:769(E).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 33:459 (March 2007), amended LR 36:1007 (May 2010), LR 39:2757 (October 2013), amended LR 44:

## **Chapter 17. Specialty Titles**

### **§1701. Definition of Practice of Psychology**

A. The definition of the practice of psychology, as contained in R.S. 37:2352(7), is a generic description, individuals certified under the provisions of R.S. 37:2351-2367 are licensed to practice psychology in accordance with that statute and the rules and regulations of the board adopted under the provisions of state statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Examiners of Psychologists, LR 6:602 (October 1980), amended LR 44:

### **§1702. Definition of Psychological Testing, Evaluation and Assessment**

A. As contained in R.S. 37:2352(7), the practice of psychology includes, but is not limited to, psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning. The Board of Examiners of Psychologists finds it necessary to formally define psychological testing in order to protect the people of this state from the unlawful, unqualified and improper use of psychological tests. The intent of this rule is to provide a definition of psychological testing sufficient to allow this board to effectively regulate this aspect of psychological practice. The Board of Examiners of Psychologists recognizes that, except as otherwise provided

by law, psychological testing may only be administered and interpreted by a person duly licensed as a psychologist by this board under R.S. 37:2351 et seq., or by a person under the direct supervision of a psychologist, provided that such supervision is in compliance with the regulations of this board.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2353.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners of Psychologists, LR 19:496 (April 1993), amended LR 44:

### **Family Impact Statement**

The Board of Examiners of Psychologists hereby issues this Family Impact Statement as set forth in R.S. 49:972. The proposed Rule related to the licensing fees imposed by this agency are not anticipated to have an impact on the stability of the family; authority and rights of parents regarding the education and supervision of their children; functioning of the family; behavior and personal responsibility of children as it relates to promptly facilitating the licensure of qualified professionals who may work with families and families of school aged children to promote their health, education and well-being; family earnings and family budget; or the ability of the family or a local government to perform the function as contained in the proposed rule.

### **Poverty Impact Statement**

The proposed modifications impact psychologists, provisionally licensed psychologists, and specialist in school psychology in the interest of the health, safety and the welfare of the public. The Rule does not have any known or foreseeable negative impact on any child, individual or family as defined by R.S. 49:973.B. Specifically, there is no known or foreseeable effect on: household income, assets, and financial security; early childhood development and preschool through postsecondary education development; employment and workforce development; taxes and tax credits; or, child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

### **Provider Impact Statement**

The proposed Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. Specifically, there is no known or foreseeable effect on: the staffing level requirements or qualifications required to provide the same level of service; the total direct or indirect cost to the providers to provide the same level of service; or the overall ability of the provider to provide the same level of service.

### **Public Comments**

Interested persons may submit written comments to Jaime T. Monic, Executive Director, 8706 Jefferson Highway, Suite B, Baton Rouge, LA 70809. All comments must be submitted by 12 noon on October 10, 2018.

Jaime T. Monic  
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Training, Credentials and Scope of  
Practice for Neuropsychology Specialty Designation and  
Provisional Licensure; other technical corrections**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE  
OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes will result in a one-time publication expense of \$1,500 for the LA State Board of Examiners of Psychologists (LSBEP) in FY 19.

The proposed rule changes define the scope and limitations of a provisional licensed psychologist; clarify training and education requirements conforming to present practice for persons practicing clinical neuropsychology; and make technical changes.

The proposed rule changes will not affect expenditures of local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE  
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule changes will not affect revenue collections for state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO  
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL  
GROUPS (Summary)**

The proposed rule changes benefit LSBEP licensees, as they insert language elaborating on regulations regarding the practice of clinical neuropsychology. Furthermore, the proposed rule changes clarify training and education requirements for practitioners of clinical neuropsychology.

The proposed rule changes benefit provisional licensed psychologists by outlining the scope and limitation of their practice, as well as placing all billing duties for services under their employing agency or their attending licensed psychologist/medical psychologist.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT  
(Summary)**

The proposed rule changes will not affect competition and employment.

Jamie Monic  
Executive Director  
1809#038

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Board of Pharmacy**

**Drugs of Concern—Naloxone (LAC 46:LIII.2901)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 *et seq.*) and the Pharmacy Practice Act (R.S. 37:1161 *et seq.*), the Louisiana Board of Pharmacy hereby gives notice of its intent to amend §2901 of Chapter 29—Prescription Monitoring Program, to amend the definition of the term ‘drugs of concern.’ The proposed rule will add the phrase ‘whose use requires tracking for public health purposes’ and will add the drug naloxone to the list of drugs identified as drugs of concern. The effect of the proposed rule will require pharmacies to include dispensing transactions of naloxone in their reports to the state prescription monitoring program. The proposed Rule also makes a technical correction to the name of another state agency. This rulemaking activity is required by Act 146 of the 2018 Legislature.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LIII. Pharmacists**

**Chapter 29. Prescription Monitoring Program  
Subchapter A. General Operations**

**§2901. Definitions**

A. As used in this Chapter, the following terms shall have the meaning ascribed to them unless the context clearly indicates otherwise:

\* \* \*

*Dispenser*—a person authorized by this state to dispense or distribute to the ultimate user any controlled substance or drug monitored by the program, but shall not include any of the following:

a. - c. ...

d. a wholesale distributor of such controlled substance or drug that is credentialed by the Louisiana Board of Drug and Device Distributors.

\* \* \*

*Drugs of Concern*—drugs other than controlled substances as defined by rule whose use requires tracking for public health purposes or which demonstrate a potential for abuse, including any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, esters, ethers, isomers, and salts of isomers [whenever the existence of such salts, esters, ethers, isomers, and salts of isomers is possible within the specific chemical designation]:

a. butalbital when in combination with at least 325 milligrams of acetaminophen per dosage unit.

b. naloxone.

\* \* \*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1011.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 33:1345 (July 2007), amended LR 36:755 (April 2010), effective September 1, 2010, amended LR 39:314 (February 2013), amended LR 40:1096 (June 2014), amended LR 41:684 (April 2015), amended by the Department of Health, Board of Pharmacy, LR 44:

**Family Impact Statement**

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a family impact statement on the Rule proposed for adoption, repeal, or amendment. The following statements will be published in the *Louisiana Register* with the proposed agency Rule.

1. The effect on the stability of the family. The proposed Rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. The proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. The proposed Rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. The proposed Rule will have no effect on family earnings or family budget.

5. The effect on the behavior and personal responsibility of children. The proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. The proposed Rule will have no effect on the ability of the family or a local government to perform the activity as contained in the proposed Rule.

#### **Poverty Impact Statement**

In accordance with Section 973 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a poverty impact statement on the Rule proposed for adoption, repeal, or amendment.

1. The effect on household income, assets, and financial security. The proposed Rule will have no effect on household income, assets, or financial security.

2. The effect on early childhood development and preschool through postsecondary education development. The proposed Rule will have no effect on early childhood development or preschool through postsecondary education development.

3. The effect on employment and workforce development. The proposed Rule will have no effect on employment or workforce development.

4. The effect on taxes and tax credits. The proposed Rule will have no effect on taxes or tax credits.

5. The effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance. The proposed Rule will have no effect on child and dependent care, housing, health care, nutrition, transportation, or utilities assistance.

#### **Provider Impact Statement**

In accordance with House Concurrent Resolution No. 170 of the Regular Session of the 2014 Legislature, there is hereby submitted a provider impact statement on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, the following effects on the providers of services to individuals with developmental disabilities:

1. The effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed Rule will have no effect on the staffing level requirements or the qualifications for that staff to provide the same level of service.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. To the extent a provider includes the dispensing of naloxone to their clients, the provider may incur a one-time cost to reclassify the drug naloxone in its dispensing information system so that their automated reports to the state prescription monitoring program will include the naloxone transactions.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed Rule will have no effect on the ability of the provider to provide the same level of service.

#### **Small Business Analysis**

In accordance with Section 965 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a regulatory flexibility analysis on the Rule proposed for adoption, repeal, or amendment. This will certify the agency has considered, without limitation, each of the following methods of reducing the impact of the proposed Rule on small businesses:

1. The establishment of less stringent compliance or reporting requirements for small businesses. The small business is free to select the method of updating their information system to ensure the inclusion of naloxone transactions in their automated reports to the state prescription monitoring program.

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses. There are no specific schedules for deadlines in the proposed Rule.

3. The consolidation or simplification of compliance or reporting requirements for small businesses. The proposed Rule requires the inclusion of naloxone in their automated reports to the state prescription monitoring program.

4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed Rule. There are no design standards in the proposed Rule. The operational standard requires the inclusion of naloxone in their automated reports to the state prescription monitoring program. The business is free to determine how it achieves that performance standard.

5. The exemption of small businesses from all or any part of the requirements contained in the proposed Rule. There are no exemptions for small businesses.

#### **Public Comments**

Interested persons may submit written comments, via United States Postal Service or other mail carrier, or in the alternative, by personal delivery, to Malcolm J Broussard, Executive Director, at the office of the Louisiana Board of Pharmacy, 3388 Brentwood Drive, Baton Rouge, Louisiana 70809-1700. He is responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for 9 am on Friday, October 26, 2018 at the Board office. At that time, all interested persons will be afforded an opportunity to submit data, views, or arguments, either orally or in writing. The deadline for the receipt of all comments is 12 noon that same day.

Malcolm J Broussard  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Drugs of Concern—Naloxone**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule changes will result in a one-time expenditure of \$2,000 in FY 19 for the La. Board of Pharmacy to publish the proposed rule changes. There will be no additional expenditures or cost savings for the Board.

To the extent other local governmental entities report dispensing transactions to the state prescription monitoring program, there may be a minimal cost for local governmental entities to update their information systems to include prescriptions for naloxone in their reports.

The proposed rule changes add to the definition of “Drugs of Concern” presently in the administrative rules, as well as add naloxone to the “Drugs of Concern” list and makes technical changes.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

Pharmacies are already required to report their dispensing transactions for controlled substances and drugs of concern to the state prescription monitoring program. Pharmacies which report their dispensing transactions to the state prescription monitoring program will need to update their information system to include prescriptions for naloxone in their reports, as it is now classified as a Drug of Concern that requires tracking for public health purposes. For some providers, there may be no cost to re-classify that drug in their information system. Other providers may need to incur a cost to perform that process.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition or employment.

Malcolm J. Broussard  
Executive Director  
1809#033

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Health  
Bureau of Health Services Financing**

**Emergency Medical Transportation Services  
Licensing Standards  
(LAC 48.I.Chapter 60)**

The Department of Health, Bureau of Health Services Financing proposes to repeal and replace LAC 48.I.Chapter 60 in the Medical Assistance Program as authorized by R.S. 36:254, R.S. 40:1135.1 and R.S. 40:1135.2. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with Act 789 of the 2012 Regular Session, Act 106 of the 2017 Regular Session and Act 557 of the 2018 Regular Session of the Louisiana Legislature, the Department of Health, Bureau of Health Services Financing proposes to repeal and replace the provisions governing the licensing standards for emergency medical transportation services in order to: 1) clarify and align these provisions with the corresponding legislative authorities governing emergency medical services; 2) ensure that the provisions are consistent with the standard language used in other healthcare licensing regulations; 3) promulgate the provisions in a clear and concise manner in the *Louisiana Administrative Code*.

**Title 48**

**PUBLIC HEALTH—GENERAL**

**Part I. General Administration**

**Subpart 3. Licensing and Certification**

**Chapter 60. Emergency Medical Transportation Services**

**§6001. Overview**

A. In the non-hospital emergency setting, pre-hospital care minimizes systemic insult or injury and manages life threatening conditions through high-quality consistent emergency standards of care. Such care is dependent on continuous quality improvement, effective monitoring, medical oversight of pre-hospital protocols, and collaboration of medical physicians and licensed basic and advanced

emergency medical personnel. These licensing standards constitute minimum guidelines that each licensed ambulance service or provider shall meet to ensure the safety of adult and non-adult patients in the emergent, pre-hospital setting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S. 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

**§6003. Definitions**

*Advanced Life Support (ALS)*—an advanced level of pre-hospital, inter-hospital, and emergency service care which includes basic life support functions, cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, administration of antiarrhythmic agents, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care, and other techniques and procedures authorized in writing by the secretary pursuant to department regulations.

*Air Ambulance*—any aircraft, either fixed-winged or rotary-winged, designed and operated as a part of a regular course of conduct or business to transport a sick or injured individual, or which is advertised or otherwise held out to the public as such.

*Air Ambulance Service*—any person, firm, association, or government entity owning, controlling, or operating any business or service which furnishes, operates, conducts, maintains, advertises, engages in, proposes to engage in, or professes to engage in the business or service of transporting, in air ambulances, individuals who may need medical attention during transport.

*Ambulance*—any authorized emergency vehicle, equipped with warning devices, designed and operated as a part of a regular course of conduct or business to transport a sick or injured individual, or which is advertised or otherwise held out to the public as such.

1. For purposes of these provisions, ambulance shall not mean a hearse or other funeral home vehicle utilized for the transportation of the dead.

2. Transportation by ambulance is inclusive of ground transport vehicles or by aircraft, either fixed-winged or rotary-winged.

*Ambulance Service/Provider or Emergency Medical Transportation Service (EMTS)*—any person, firm, association, or government entity owning, controlling, or operating any business or service which furnishes, operates, conducts, maintains, advertises, engages in, proposes to engage in, or professes to engage in the business or service of transporting, in ambulances, air and/or ground transportation, individuals who may need medical attention during transport.

1. Ambulance services/providers, air and/or ground transportation, shall not include any of the following:

- a. an agency of the federal government;
- b. a volunteer nonprofit organization or municipal nonprofit organization operating an invalid coach or coaches;
- c. an entity rendering assistance to a licensed ambulance or ambulances in the case of a major disaster;
- d. a licensed hospital providing nonemergency noncritical, inter-hospital transfer and patient transportation for diagnostic and therapeutic purposes when such transportation originates at a licensed hospital;
- e. an entity operating an air or ground transportation ambulance(s) from a location outside of the state to transport patients from a location outside of the state to a location inside

the state or to transport a patient(s) from a medical facility inside of the state to a location outside of the state; or

f. an entity providing transportation to employees, who become sick or injured during the course of their employment, from a job site to the nearest appropriate medical facility.

*Appropriate Facility*—an institution generally equipped to provide the needed hospital or skilled nursing care for the illness or injury involved. In the case of a hospital, a physician or a physician specialist is available to provide the necessary care required to treat the patient's condition.

*Auto-Injector*—a portable, disposable drug delivery device that contains a measured, single dose of epinephrine that is used to treat a person suffering a potentially life-threatening anaphylactic reaction.

*Basic Life Support (BLS)*—emergency medical care administered to the level of the licensed emergency medical responder scope of practice.

*Bureau*—the Department of Health, Bureau of Emergency Medical Services (BEMS).

*Cessation of Business*—occurs when an ambulance service is non-operational and voluntarily stops rendering services to the community.

*Change of Ownership (CHOW)*—the sale or transfer (whether by purchase, lease, gift or otherwise) of an ambulance service by a person/entity with controlling interest that results in a change of ownership, or control of 30 percent or greater of either the voting rights or assets of a provider, or that results in the acquiring person/corporation holding a 50 percent or greater interest in the ownership or control of the provider.

*Commission*—the Louisiana Emergency Medical Services Certification Commission.

*Department*—the Louisiana Department of Health (LDH).

*Emergency Medical Response Vehicle (EMRV)*—a marked emergency vehicle with fully visual and/or audible warning signals, operated by a certified ambulance service, whose primary purpose is to respond to the scene of a medical emergency to provide emergency medical stabilization or support, command, control, and communications, but which is not an ambulance designed or intended for the purpose of transporting a victim from the scene to a medical facility, regardless of its designation.

1. Included are such vehicles referred to, but not limited to, the designation as sprint car, quick response vehicle, special response vehicle, triage trucks, staff cars, supervisor units, and other similar designations.

2. Emergency medical response vehicles shall not include fire apparatus and law enforcement patrol vehicles which carry first aid or emergency medical supplies, and which respond to medical emergencies as part of their routine duties.

*Emergency Medical Services (EMS)*—a system that represents the combined efforts of several professionals and agencies to provide pre-hospital emergency care to the sick and injured.

*EMS Medical Director*—a physician licensed by the Louisiana State Board of Medical Examiners who has responsibility and authority to ensure quality of care and provide guidance for all medical aspects of the EMTS.

*EMS Practitioner*—an individual who is a licensed emergency medical responder (EMR), a licensed emergency medical technician (EMT), a licensed advanced emergency medical technician (AEMT) or a licensed paramedic. EMS Practitioners are licensed by the LDH- BEMS.

*EMS Task Force*—composed of individuals, subject to the approval of the secretary of the department, who advises and makes recommendations to the BEMS and the department on matters related to EMS.

*Emergency Vehicle*—a vehicle that meets the requirements of emergency vehicle pursuant to the Louisiana Highway Regulatory Act.

*Headquarters*—an ambulance service's center of operation and control.

*Health Standards Section (HSS)*—the licensing and certification agency of the Department of Health.

*Industrial Ambulance*—any vehicle owned and operated by an industrial facility and used for transporting any employee who becomes sick, injured or otherwise incapacitated in the course and scope of his employment from a job site to an appropriate medical facility.

*Infant*—in accordance with the *Louisiana Safe Haven* statutes, a child not previously subjected to abuse or neglect, who is not more than 60 days old as determined within a reasonable degree of medical certainty by an examining physician.

*LERN*—the Louisiana Emergency Response Network.

*Licensed Emergency Medical Services Practitioner*—an individual who is a licensed emergency medical responder or who is nationally registered, has successfully completed an emergency medical services practitioner education program based on national EMS education standards, and is licensed as any of the following:

1. emergency medical technician;
2. advanced emergency medical technician; or
3. paramedic.

*Licensed Emergency Medical Responder*—any individual who has successfully completed an emergency medical responder education program based on *National EMS Education Standards* approved by the bureau and who is licensed by the bureau.

*Municipal Nonprofit Organization*—an organization owned by a parish, municipality or entity of a parish or municipality which in its regular course of business responds to a call for help and renders medical treatment and whose attendants are emergency medical personnel, a registered nurse or a physician.

*National EMS Education Standards*—the document that outlines the January 2009 National EMS Education Standards.

*Non-Operational*—an ambulance service that is not available for operation on designated days and hours as stated on the licensing application and as defined in operational requirements pursuant to this Chapter.

*Operational*—an ambulance service that has a functional communications center (either owned and operated, or contracted) on duty 24 hours a day, 365 days a year. There shall also be at least one staffed ambulance at the service's level of care on duty and able to respond to requests for service 24 hours a day, 365 days a year within the provider's service area unless excepted under other provisions of this Chapter.

*Physician*—a physician licensed to practice medicine by the Louisiana State Board of Medical Examiners.

*Safe Haven*—a mechanism whereby any parent may relinquish the care of an infant to the state in safety, anonymity and without fear of prosecution, pursuant to *Louisiana Safe Haven* statutes.

*Scope of Practice*—the procedures, actions and processes that a healthcare practitioner is permitted to undertake in keeping with the terms of their professional licensure in accordance with state laws, rules and regulations. The scope of practice is limited to that which the law allows for specific education and experience, and specific demonstrated competency.

*Volunteer Nonprofit Organization*—an organization which in its regular course of business responds to a call for help and renders medical treatment, whose attendants are emergency medical personnel, a registered nurse, or a physician and which is chartered as a nonprofit organization under Section 501c of the U.S. Internal Revenue Code, as a volunteer fire department by the Louisiana State Fire Marshal's Office, or as a nonprofit organization by the Louisiana Secretary of State.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S. 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6005. Licensing Requirements and Types of Licenses**

A. All ambulance services shall be licensed by the Department of Health (LDH). It shall be unlawful to operate or maintain an ambulance service in the state of Louisiana without possessing a license from the department. The Department of Health is the only licensing agency for ambulance services in the state of Louisiana.

B. No person, firm, corporation, association or government entity shall conduct, manage, operate or maintain an ambulance service in Louisiana without a valid current license from the department.

C. No person shall conduct, maintain or operate an ambulance which does not carry with it, in fully operational condition, equipment consistent with the scope of practice for emergency medical technicians established in R.S. 40:1133.14. Each ambulance service provider shall develop and maintain a written policy identifying the personnel and equipment required to comply with the provisions of this Chapter.

D. Ground ambulance services shall be licensed separately from air ambulance services. In those air ambulance services that are joint ventures, the license shall be issued to the provider of medical care and services.

E. A separately licensed ambulance service shall not use a name which is substantially the same as the name of

another ambulance service licensed by the department unless the applicant is part of the same corporation or is chain affiliated and includes a geographic or other distinct identifier.

F. A license issued to an ambulance service shall:

1. be issued to the person or entity named in the license application;
2. be valid only for one service's headquarters and its substations to which it is issued, and only for the specific geographic address of that headquarters;
3. be valid for one year from the date of issuance, unless revoked, suspended, modified or terminated prior to that date or unless a provisional license is issued;
4. expire on the last day of the twelfth month after the date of issuance, unless timely renewed by the service;
5. not be subject to sale, assignment, donation or other transfer, whether voluntary or involuntary; and
6. be posted in a conspicuous place in the ambulance service's headquarters at all times.

G. The department has the authority to issue the following types of licenses.

1. A full license is issued only to those applicants that are in substantial compliance with all applicable federal, state, and local laws, regulations and policies. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended or terminated.

2. A provisional license may be issued to those providers or applicants that do not meet the criteria for full licensure. The license shall be valid for a period not to exceed six months.

a. An acceptable plan of correction is required from a provider for any survey where deficiencies have been cited, regardless of whether the department takes other action against the facility for the deficiencies cited in the survey.

b. The provider shall submit the plan of correction to the department for approval within the prescribed timeframe, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license.

c. The department may conduct a follow-up inspection prior to the expiration of the provisional license. If at the follow-up inspection, the provider or applicant has corrected all non-compliance or violations, the department may issue a full license. The full license shall be valid until the ambulance service's license anniversary date.

d. For an applicant applying for initial licensure, if the follow-up inspection reveals that the ambulance service failed to correct all violations, the applicant shall be required to begin the initial licensing process again by submitting a new initial licensing packet and required fee in order to become licensed.

e. For an existing ambulance provider, if the follow-up inspection reveals that the provider has failed to correct all violations, the department may re-issue a provisional license or allow the provisional license to expire.

f. A provisional license may be issued by the department for the following non-exclusive reasons:

- i. the applicant or service has more than five violations of ambulance service regulations during one inspection;
- ii. the applicant or service has more than three substantiated complaints in a one-year period;
- iii. the department, medical director, or the quality improvement program have identified medical care that places patient(s) at risk;
- iv. the applicant or service fails to correct violations within 60 days of being cited, or at the time of a follow-up inspection, whichever occurs first;
- v. the applicant fails to submit assessed fees after notification by the department; or
- vi. there is documented evidence that the applicant has bribed, intimidated or harassed someone to use the services of any particular ambulance service.

3. If an existing licensed ambulance provider has been issued a notice of license revocation, suspension, modification or termination and the provider's license is due for annual renewal, the department shall deny the license renewal. The denial of license renewal of such a license does not affect in any manner the license revocation, suspension, modification or termination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6007. Initial Licensing**

A. All requirements of the application process for licensing shall be completed by the applicant before the application will be processed by the department.

1. No application will be reviewed until the required application fee is paid.

B. An application packet may be obtained from the department or electronically obtained from the department's HSS website.

1. A completed application packet for an ambulance service shall be submitted to, and approved by, the department prior to an applicant providing any ambulance service.

C. The license application shall be submitted to the department on forms provided for that purpose.

1. The application shall provide documentation that the applicant meets the appropriate requirements for an ambulance provider as specified by regulations established by the department.

a. An incomplete application shall be returned to the applicant.

D. An applicant seeking a license as an ambulance provider shall indicate the:

- 1. type of license requested;
  - a. ground transportation; and/or
  - b. air ambulance; and
- 2. the highest level of care that the service may function consistent with its equipment and personnel and in accordance with the U.S. Department of Transportation National Highway Traffic Safety Administration's National Standard Emergency Medical Services (EMS) Curriculum and the Louisiana EMS Certification Commission's rules;
  - a. sprint or other emergency medical response vehicle (EMRV);
  - b. basic level ambulance;

- c. paramedic level ambulance; or
- d. air ambulance service;
  - i. fixed wing; and/or
  - ii. rotary aircraft.

E. An applicant seeking a license as an ambulance provider shall:

1. provide at least one unit for 24 hours a day, 365 days a year at the highest level of care for which the service applies for and becomes licensed to provide;

2. for ambulance services that serve more than one parish, provide at least one unit at the highest level of care for 24 hours a day, 365 days a year in each parish served;

3. for an air ambulance service, provide the level of care at the licensed paramedic level.

a. The department may require the submission of work schedules and individual credentials to verify;

F. The completed application shall be submitted with the required information and the following supporting documentation:

1. a notarized certificate of insurance verifying proof of required commercial automobile or aircraft liability insurance;

2. proof that the provider has a medical director and that such director is a physician licensed to practice medicine by the Louisiana State Board of Medical Examiners and who has responsibility and authority to ensure quality of care and provide guidance for all medical aspects of EMS;

3. all medical protocols signed by the physician/medical director with their prescribed approvals by the parish or component medical society, and/or LERN as applicable;

4. copies of key personnel certifications and professional licensure(s), inclusive of the director of operations and the medical director;

5. for providers of advanced life support, verification that the provider possesses a Louisiana controlled substance license and a U.S. Drug Enforcement Administration controlled substance registration;

6. the unit numbers, vehicle identification numbers and other identifying vehicle registration information for each unit assigned to the area or each aircraft in service;

a. for ground transportation providers, a copy of the certificate of registration from the Office of Motor Vehicles;

b. for air ambulances providers, a copy of the Federal Aviation Administration (FAA) Part 135 Commercial Air Taxi Certificate;

7. proof that the ambulance service holds a Clinical Laboratory Improvement Act (CLIA) certificate commensurate with the level of testing performed;

8. documentation that the applicant seeking licensure as an ambulance provider is in compliance with the criminal history check requirements of R.S. 40:1203.1- 1203.5;

9. a copy of all necessary local permits and licenses to operate in a service area; and

10. any other documentation required by the department for licensure.

G. Service Area. An applicant for an EMTS license shall declare his service area in writing. The department may require the applicant to provide a map of the service area.

H. The applicant shall be prepared to be fully operational for an initial inspection within 90 days after payment of the

application fee. If the applicant is unable to do so, the application may be closed.

1. If the application is closed and the applicant is still interested in becoming an ambulance service provider, he/she shall submit a new initial application packet, including a new initial fee to start the licensing process.

I. Prior to the initial license being issued to the provider, an initial licensing inspection shall be conducted to assure compliance with licensing standards and applicable federal, state or local statutes, laws, ordinances, rules and regulations.

J. Until the initial license is issued to the provider by the department, no patient shall be provided ambulance service by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6009. Service Areas**

A. An ambulance provider's service area is that territory in which the ambulance provider renders services, has vehicles posted or domiciled in each service area and is legally authorized by the local government to provide services.

B. Expansion of Service Area. If an ambulance provider wishes to expand into additional service areas, such notice shall be given to the department at least 72 hours in advance.

1. This notification shall include:

- a. a description of the territory added;
- b. the unit numbers and vehicle identification numbers of vehicles assigned to the area; and
- c. the address and telephone number of any substations within the designated service area.

2. The provider shall also provide a copy of all necessary local permits and licenses.

C. Withdrawal from Service Area. If an ambulance service withdraws from a territory, it shall notify the department at least 30 days in advance. The EMTS shall provide the department with evidence that it has notified the appropriate local authorities that it will no longer be providing ambulance service in the area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6011. Governing Body**

A. The EMTS provider shall have a governing body that is legally responsible for establishing and implementing policies regarding the management and operation of the ambulance service.

1. The governing body shall develop, approve, implement and re-evaluate policies and procedures which define and describe the:

- a. scope of services offered;
- b. maintenance and availability of equipment and supplies necessary to perform such services;
- c. employment and supervision of qualified personnel authorized to carry out the performance of emergency services; and
- d. maintenance of the vehicles to ensure such are in safe and working order.

2. The policies and procedures shall be revised as necessary and reviewed at least annually.

B. The governing body shall be responsible for the:

1. overall operation of the ambulance service, inclusive of monitoring and evaluating the performance of the administration of the ambulance service;

2. performance of the personnel providing direct emergency care; and

3. the performance of the vehicles.

C. The governing body shall appoint, in writing, a director of operations responsible for the management and daily operation of the ambulance service, inclusive of supervision to ensure ready availability and replacement of needed equipment and supplies for each service run.

D. The governing body of the ambulance service shall appoint a qualified designee charged with the general administration of the ambulance service in the absence of the director of operations.

E. The governing body shall notify the department in writing when a change occurs in the director of operations or the medical director's position within 30 calendar days from the date the change occurs. The notice shall include the identity of the individual, the individual's qualifications and the specific date the change occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6013. Fees**

A. Any remittance submitted to the department in payment of a required fee shall be in the form/manner specified by the department.

B. Fee amounts shall be determined by the department in accordance with R.S. 40: 1135.4 et seq.

C. Fees paid to the department are not refundable.

D. A fee is required to be submitted with:

1. initial application;
2. a renewal application;
3. change of controlling ownership;
4. change of name or physical address; and
5. each application for a permit to add a vehicle to the service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6015. Inspections, Surveys or Investigations**

A. Initial Inspections. An applicant shall successfully complete an initial inspection by the department which includes:

1. an inspection of all vehicles to determine that they are safe and in working order and are equipped with all of the prescribed medical equipment, as required by these provisions and in accordance with state and local laws and regulations:

a. safe and working order shall be determined pursuant to the provisions of R.S. 32:1 et seq. and the Louisiana Motor Vehicle Inspection Manual, in addition to the provisions of this Chapter and R.S. 40:1135.1 et seq.;

b. for aircraft, safe and working order shall be determined by FAA rules, in addition to the provisions of this Chapter and R.S. 40:1135.1 et seq.;

c. each vehicle successfully completing the inspection shall receive a permit (evidenced by a department issued decal) authorizing it to be operated as part of the applicant's fleet;



2. an inspection of all personnel credentials to verify that they meet the requirements of law;

3. an inspection, and when deemed necessary by the department, verification of the information required in this Chapter and that such information remains current;

4. verification that the provider has complied with all applicable federal, state, and local statutes and rules, and has obtained all necessary and applicable licenses, permits and certifications, including certificates of need or certificates of public convenience and necessity; and

5. for providers rendering advanced life support, verification that the provider possesses a Louisiana controlled substance license and a U.S. Drug Enforcement Administration controlled substance registration.

B. Other Inspections. The department may conduct the following types of inspections.

1. Licensing Inspection. Licensing inspection is a periodic survey or investigation conducted as necessary to assure compliance with ambulance provider licensing standards.

2. Follow-Up Inspection. A follow-up inspection may be conducted whenever necessary to assure correction of non-compliance. When applicable, the department may clear deficiencies by administrative desk review.

3. Complaint Inspection. In accordance with R.S. 40:2009.13 et seq., a complaint inspection may be conducted to investigate allegations of non-compliance. Complaint inspections are unannounced.

4. Fleet Addition Inspections

a. Any ambulance service adding a ground transportation ambulance, air ambulance or sprint (EMRV) vehicles to the EMTS fleet shall provide written notification to the department in advance of the addition. The notification shall include:

- i. vehicle identification number;
- ii. copy of the certificate of registration from the Office of Motor Vehicles or the Federal Aviation Administration;
- iii. proof of commercial automobile or aircraft liability insurance; and
- iv. vehicle inspection fee.

b. Once a temporary notice of approval for the vehicle fleet addition is received, the vehicle may be placed in service.

i. The temporary notice of approval shall be carried in the vehicle until the fleet addition vehicle inspection is completed and a state-issued permit is received.

ii. The vehicle or aircraft shall be inspected for the requirements of the Louisiana Motor Vehicle Inspection Act, FAA Part 135 and this Chapter.

NOTE: The decal shall be affixed to a non-obstructive viewing area of the vehicle.

c. Any vehicle borrowed, leased or rented by the service for less than 90 days shall not be subject to a vehicle inspection fee.

i. All vehicles shall be subject to compliance with this Chapter and are issued a temporary notice of approval for use.

ii. The temporary approval shall be carried in the vehicle at all times.

C. When a vehicle is required to be inspected, but is not available, it is the responsibility of the provider to arrange for

the vehicle to be available to the surveyor for inspection within 30 days of the on-site survey.

D. For EMTS providers based in Louisiana, who border an adjacent state and use vehicles from the bordering state, such vehicles are not required to have a Louisiana license plate, but such shall be in accordance with the adjacent state's rules, laws and regulations in operation of the EMTS vehicle. These vehicles shall be available for inspection for compliance with Louisiana inspection requirements pursuant to this Chapter.

E. Department of Health surveyors and staff shall be:

1. given access to all areas and relevant files of the provider during any inspection or investigation; and

2. allowed to interview any person with ownership interest, staff or patient, as necessary or required to conduct the inspection or investigation.

F. The EMTS provider shall receive a written statement of findings of any deficiencies cited based on an inspection or investigation which includes notice of the required plan of correction, as applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

**§6017. Statement of Deficiencies**

A. Any statement of deficiencies issued by the department to the ambulance service provider shall be available for disclosure to the public 30 days after the provider submits an acceptable plan of correction or 90 days after the statement of deficiencies is issued to the provider, whichever occurs first.

B. Unless otherwise provided in statute or in these licensing provisions, a provider shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

1. Correction of the violation, noncompliance or deficiency shall not be the basis for the reconsideration.

2. The informal reconsideration of the deficiencies shall be requested in writing within 10 calendar days of receipt of the statement of deficiencies, unless otherwise provided in these standards.

3. The request for informal reconsideration of the deficiencies shall be made to the department's Health Standards Section and will be considered timely if received by HSS within 10 calendar days of the provider's receipt of the statement deficiencies.

4. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the informal reconsideration.

NOTE: Informal reconsiderations of the results of a complaint investigation are conducted as desk reviews.

5. The provider shall be notified in writing of the results of the informal reconsideration.

6. Except as provided for complaint surveys pursuant to R.S. 40:2009.13 et seq., and as provided in these licensing provisions for initial license denials, revocations and denial of license renewals in accordance with the provisions of §6027, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies.

7. The request for an informal reconsideration of any deficiencies cited as a result of a survey or investigation does not delay submission of the required plan of correction within the prescribed timeframe.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6019. Changes**

A. The Department of Health shall be notified, in writing, within five working days of the occurrence of any changes in:

1. physical address of the headquarters;
2. agency name;
3. telephone number and/or e-mail address;
4. 24-hour contact procedure;
5. ownership;
6. physical address, e-mail address or telephone number of any substation or the addition of any substation;
7. director of operations (a completed key personnel change form is required);
8. medical directors (a completed key personnel change form is required);
9. insurance coverage;
10. cessation of business in accordance with §6029; or
11. change in the service area.

#### **B. Change of Ownership (CHOW)**

1. Actions which constitute a CHOW include, but are not limited to the following.

a. Unincorporated Sole Proprietorship. Transfer of title and property to another party.

b. Corporation/Limited Liability Corporation (LLC). The merger of the provider corporation into another corporation, or the consolidation of two or more corporations, resulting in the creation of a new corporation.

i. Transfer of corporate stock or the merger of another corporation into the provider corporation does not constitute a CHOW.

c. Partnership. In the case of a partnership, the removal, addition or substitution of a partner, unless the partners expressly agree otherwise, as permitted by applicable state law.

d. Leasing. The lease of all or part of a provider's entity constitutes a CHOW of the leased portion.

2. Change of ownership packets may be obtained from the department or electronically from the department's website.

a. Only an agency with a full license shall be approved to undergo a CHOW.

b. An ambulance service license is not transferable from one entity or owner to another.

i. An ambulance service that is under license revocation, provisional licensure or denial of license renewal may not undergo a CHOW.

3. The following information shall be submitted within five working days after the act of sale:

a. a new license application and the current licensing fee;

i. the purchaser of the agency shall meet all criteria required for initial licensure as an ambulance services provider;

b. changes in the name and/or address of the ambulance service;

c. changes in medical director or director of operations;

d. disclosure of ownership forms; and

e. copy of the bill of sale and articles of incorporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6021. License Renewal**

A. An ambulance service license shall be renewed annually.

B. An ambulance service seeking a renewal of its license shall:

1. request a renewal packet from the department if one is not received at least 45 days prior to license expiration;

a. The renewal packet forms may be electronically downloaded from the department's HSS webpage.

2. complete all forms and attachments and return to the department at least 30 days prior to license expiration;

3. submit the current annual licensing fees with the packet; and

a. An application is not complete without the licensing fees; and

4. submit any changes in medical protocols, if made since last license renewal.

C. The department may issue a full renewal license to an existing licensed provider that is in substantial compliance with all applicable federal, state departmental and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is revoked, suspended, denied or modified.

D. Failure to submit a completed license renewal application packet to the department prior to the expiration of the current license, or prior to the expiration of deadlines established by the department, shall result in the voluntary non-renewal of the license.

E. There is no appeal opportunity afforded to a provider for the voluntary non-renewal of an EMTS license.

F. The renewal of a license does not in any manner affect any sanction, civil monetary penalty or other action imposed by the department against the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S 40:1135

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6023. Denial, Revocation or Suspension of a License**

A. Denial of an Initial License. An applicant may be denied an initial license for one of the following non-exclusive reasons:

1. background investigation indicates a felony conviction pursuant to RS 40:1203.3 et seq.;

2. any license pertaining to the provision of emergency medical services was revoked in any jurisdiction;

3. failure to comply with applicable federal, state, and local laws, statutes, rules or regulations;

4. intentional falsification of material information provided pursuant to this Chapter; or

5. conviction, guilty plea or plea of nolo contendere of a felony by the following, as shown by a certified copy of the record of the court of the conviction:

a. director of operations;

b. members or officers; or

c. person(s) designated to manage or supervise the ambulance service, if the applicant is a firm or corporation.

B. Revocation or Denial of License Renewal. An ambulance service's license may be revoked or may be denied renewal for any of the following:

1. failure to be in substantial compliance with the ambulance service licensing standards;
2. failure to be in substantial compliance with other required statutes, laws, ordinances, rules or regulations;
3. failure to comply with the terms of a settlement agreement or education letter;
4. failure to uphold patient rights, whereby violations may result in harm or injury;
5. failure of the agency to protect patients/persons in the community from harmful actions of the agency employees including, but not limited to:
  - a. health and safety;
  - b. coercion;
  - c. threat;
  - d. intimidation; and
  - e. harassment;
6. failure to notify proper authorities including, but not limited to, law enforcement, the department (HSS), and BEMS of all suspected cases of neglect, criminal activity, or mental or physical abuse which could potentially cause harm to the patient;
7. failure to employ qualified personnel and maintain an adequate quality assurance program that identifies poorly performing staff and remediates or terminates them for deficiencies;
8. failure to maintain in force, and continuously, any required insurance coverage(s);
9. failure to submit fees including, but not limited to:
  - a. renewal fee;
  - b. change of agency address or name; or
  - c. any fines assessed by the department;
10. failure to allow the department to conduct an investigation, inspection or survey, or to interview staff or participants, or to allow access to any relevant records during any inspection;
11. failure to remedy a situation where patients were not protected from unsafe, skilled and/or unskilled care by any person employed by the ambulance service;
12. ambulance provider staff or owner has knowingly, or with reason to know, made a false statement of a material fact in:
  - a. application for licensing;
  - b. data forms;
  - c. clinical records;
  - d. matters under investigation by the department;
  - e. information submitted for reimbursement from any payment source;
  - f. the use of false, fraudulent or misleading advertising;
  - g. ambulance service staff being misrepresented or was fraudulent in conducting ambulance service business; or
  - h. convictions of a felony by an owner, administrator, director of operations or medical director, as shown by a certified copy of the record of the court of conviction or, if the applicant is a firm or corporation, of any of its members or officers or the person designated to manage or supervise the ambulance service agency; or
13. failure to comply with all reporting requirements in a timely manner.

C. If an ambulance provider's license is revoked or denied renewal by the department, any owner, officer, member, manager or administrator of such service is prohibited from owning, managing, directing or operating another service for a period of two years from the date of the final disposition of the revocation or denial action.

D. The secretary of the department may immediately suspend the license of an ambulance provider in accordance with the provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6025. Sanctions**

A. In accordance with RS 40:1135.5 et seq., any person or provider violating the provisions of this Chapter when such violation poses a threat to the health, safety, rights or welfare of a patient or client may be liable to sanctions and other penalties, to be assessed by the department, in addition to any criminal action which may be brought under other applicable laws. Such action may include, but not be limited to:

1. civil fine(s) pursuant to R.S. 40:1135.5(B)2(a-e) et seq.;
2. provisional licensure;
3. denial of license renewal; or
4. license revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6027. Notices, Informal Reconsiderations and Appeals**

A. Following any inspection or complaint investigation, the department will issue a notice of deficient practice.

B. Informal Reconsideration. Upon notice of an initial license denial, suspension, revocation of a license or denial of license renewal, due to non-compliance with any of the provisions of this Chapter or any applicable statute, or of the imposition of a civil fine, or other sanction, the ambulance service provider may request an informal reconsideration. An informal reconsideration may also be referred to as administrative reconsideration.

1. A request for an informal reconsideration shall be submitted in writing to the department within 15 calendar days of receipt of the notification.

2. The reconsideration shall be conducted by a designated official(s) of the department who did not participate in the initial decision to impose the action taken.

3. The provider shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

4. Reconsideration shall be made based on the documents before the official(s). The provider may present documents at the informal reconsideration.

5. Correction of a violation shall not be the basis for reconsideration.

6. There is no right to an informal reconsideration of the department's decision to issue a provisional license or to allow a provisional license to expire, or for a license that has been voluntarily surrendered or non-renewed.

C. A provider with a provisional license that expires due to non-compliance or deficiencies cited at the follow-up inspection may request an informal reconsideration only of the validity of the deficiencies cited at the follow up survey.

1. The reconsideration is limited to whether the violations or findings of non-compliance were properly cited at the follow-up inspection.

2. The provider has five calendar days from receipt of the notice of the results of the follow-up inspection survey to request an informal reconsideration.

3. Correction of a violation or finding of non-compliance after the applicable inspection shall not be the basis for an informal reconsideration.

4. The provider shall receive written notice of the results of the reconsideration.

D. Administrative Appeal of a Decision to Deny, Suspend, Revoke or Deny Renewal of a License. Any ambulance service provider whose license has been revoked, suspended, denied or denied renewal by the department shall have the right to have an administrative appeal, provided that such request for appeal is made in writing to the DAL within 30 calendar days of receipt of the notice of the department's decision, or within 30 days of receipt of the results of the informal reconsideration pursuant to the provisions of this Chapter.

1. An appeal of a decision to deny, revoke or deny renewal of a license is suspensive. The department's decision will not be implemented until it is affirmed on judicial review, or there is no request for judicial review within the applicable time limits.

2. An appeal of a suspension of a license is devolutive. The provider shall cease providing services upon receipt of notification of the suspension of its license.

3. An ambulance provider has the right to a judicial review of an administrative appeal affirming a denial, suspension, revocation or denial of license renewal in accordance with the Administrative Procedure Act. Judicial review shall be by trial de novo.

E. Administrative Appeal of a Civil Fine or Other Sanction. An ambulance service provider has the right to submit an administrative appeal of a notice of a civil fine(s). Such appeal is suspensive and shall be submitted within 30 calendar days of receipt of such notice, or within 30 calendar days of the receipt of the results of the informal reconsideration contesting the civil fine(s). If the administrative appeal decision is adverse to the provider, the provider may request a judicial review of the decision in accordance with the Administrative Procedure Act.

F. A provider with a provisional license that expires due to non-compliance or deficiencies cited at the follow-up inspection may request an administrative appeal only of the validity of the deficiencies cited at the follow-up survey.

1. The appeal is limited to whether the violations or findings of non-compliance were properly cited at the follow-up inspection.

2. The provider has 15 calendar days from the notice of the results of the follow-up inspection to request an administrative appeal.

3. The provider's appeal is devolutive. The provider shall cease providing services unless an administrative tribunal issues a stay of the expiration.

a. To request a stay, an application for a stay shall be filed by the provider at the time the administrative appeal is filed.

i. The stay may be granted by the administrative tribunal; only after a contradictory hearing and only upon a

showing that there is no potential harm to the patient(s) being served by the provider.

G. If an ambulance provider fails to submit an administrative appeal within the prescribed time frame of receiving the notification of which the provider may appeal, the department's decision becomes final.

H. There is no right to an administrative appeal of the department's decision to issue a provisional license, to allow a provisional license to expire, or for a license that has been voluntarily surrendered or non-renewed.

I. Correction of a violation or finding of non-compliance after the applicable inspection shall not be the basis for an administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S.40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6029. Cessation of Business**

A. Except as provided in §6031 or §6033 of this Chapter, a license shall be immediately null and void if an ambulance service ceases to operate.

B. A cessation of business is deemed to be effective the date on which the ambulance service stopped offering or providing services to the community.

C. Upon the cessation of business, the ambulance service shall immediately return the original license to the department.

D. Cessation of business is deemed to be a voluntary action on the part of the ambulance service. The ambulance service does not have a right to appeal a cessation of business.

E. The ambulance service shall notify the department in writing 30 days prior to the effective date of the closure or cessation. In addition to the notice, the ambulance service shall submit a written plan for the disposition of patient medical records for approval by the department. The plan shall include the following:

1. the effective date of the closure;

2. provisions that comply with federal and state laws on storage, maintenance, access and confidentiality of the closed provider's patients' medical records; and

3. an appointed custodian(s) who shall provide the following:

a. access to records and copies of records to the patient or authorized representative, upon presentation of proper authorization(s); and

b. physical and environmental security that protects the records against fire, water, intrusion, unauthorized access, loss and destruction.

4. Public notice regarding access to records, in the newspaper with the largest circulation in close proximity to the closing provider, at least 15 calendar days prior to the effective date of closure.

F. If an ambulance service fails to follow these procedures, the owners, managers, officers, directors and administrators may be prohibited from opening, managing,

directing, operating or owning an ambulance service for a period of two years.

G. Once the ambulance service has ceased doing business, the provider shall not provide services until the provider has obtained a new initial license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6031. Inactivation of License Due to a Declared**

##### **Disaster or Emergency**

A. An ambulance service licensed in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766 may seek to inactivate its license for a period not to exceed one year, provided that the following conditions are met:

1. the ambulance service shall submit written notification to HSS within 60 days of the date of the executive order or proclamation of emergency or disaster that:

a. the ambulance service has experienced an interruption in the provision of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. the ambulance service intends to resume operation as an ambulance service in the same service area;

c. includes an attestation that the emergency or disaster is the sole causal factor in the interruption of the provision of services;

2. the ambulance service resumes operating in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

3. the ambulance service continues to pay all fees and costs due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties, if applicable; and

4. the ambulance service continues to submit required documentation and information to the department.

B. Upon receiving a completed written request to inactivate an ambulance service license, the department may issue a notice of inactivation of license to the ambulance service.

C. Upon completion of repairs, renovations, rebuilding or replacement, an ambulance service which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

1. The ambulance service submits a written license reinstatement request to HSS 60 days prior to the anticipated date of reopening.

a. The license reinstatement request informs the department of the anticipated date of opening, and shall request scheduling of a licensing survey;

b. The license reinstatement request includes a completed licensing application with appropriate licensing fees;

c. The ambulance service submits a copy of the on-site health inspection report with approval of occupancy from the Office of Public Health (OPH); and

2. The ambulance service resumes operating in the same service area within one year.

D. Upon receiving a completed written request to reinstate an ambulance service license, the department shall conduct a licensing survey. If the ambulance service meets the requirements for licensure and the requirements under this Section, the department may issue a notice of reinstatement of the ambulance service license.

E. No change of ownership of the ambulance service shall occur until such ambulance service has completed repairs, renovations, rebuilding or replacement construction, and has resumed operations as an ambulance service.

F. The provisions of this Section shall not apply to an ambulance service which has voluntarily surrendered its license and ceased operation.

G. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the ambulance service license. There is no appeal opportunity of a voluntary surrender of license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6033. Inactivation of License due to a Non-Declared**

##### **Disaster or Emergency**

A. A licensed ambulance service provider in an area or areas which have been affected by a non-declared emergency or disaster may seek to inactivate its license, provided that the following conditions are met:

1. the provider shall submit written notification to the Health Standards Section within 30 days of the date of the non-declared emergency or disaster stating that:

a. the ambulance service has experienced an interruption in the provisions of services as a result of events that are due to a non-declared emergency or disaster;

b. the ambulance service intends to resume operation in the same service area;

c. the ambulance service attests that the emergency or disaster is the sole causal factor in the interruption of the provision of services; and

d. the ambulance service's initial request to inactivate does not exceed one year for the completion of repairs, renovations, rebuilding or replacement of the facility.

NOTE: Pursuant to these provisions, an extension of the 30-day deadline for initiation of request may be granted at the discretion of the department.

2. the ambulance service continues to pay all fees and costs due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties and/or civil fines; and

3. the ambulance service continues to submit required documentation and information to the department, including but not limited to cost reports.

B. Upon receiving a completed written request to temporarily inactivate an ambulance service provider license, the department shall issue a notice of inactivation of license to the ambulance service provider.

C. Upon the provider's receipt of the department's approval of request to inactivate the provider's license, the ambulance service shall have 90 days to submit plans for the repairs, renovations, rebuilding or replacement of the facility, if applicable, to the OSFM and the OPH as required.

D. The ambulance service shall resume operating as an ambulance service in the same service area within one year of

the approval of renovation/construction plans by the OSFM and the OPH (as required).

EXCEPTION: If the EMTS provider requires an extension of this timeframe due to circumstances beyond the provider's control, the department will consider an extended time period to complete construction or repairs. Such written request for extension shall show provider's active efforts to complete construction or repairs and the reasons for request for extension of provider's inactive license. Any approval for extension is at the sole discretion of the department.

E. Upon completion of repairs, renovations, rebuilding or replacement of the facility, an ambulance service which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

1. the ambulance service submits a written license reinstatement request to the licensing agency of the department;

2. the license reinstatement request informs the department of the anticipated date of opening and shall request scheduling of a licensing or physical environment survey or vehicle inspection, where applicable; and

3. the license reinstatement request includes a completed licensing application with appropriate licensing fees.

F. Upon receiving a completed written request to reinstate an ambulance service provider's license, the department may conduct a licensing or physical environment survey and/or vehicle inspections. The department may issue a notice of reinstatement if the provider has met the requirements for licensure including the requirements of this Subsection.

G. No change of ownership in the ambulance service shall occur until such provider has completed repairs, renovations, rebuilding or replacement construction and has resumed operations as an ambulance service.

H. The provisions of this Section shall not apply to an ambulance service which has voluntarily surrendered its license and ceased operation.

I. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the ambulance service license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

## **Subchapter B. Provider Responsibilities**

### **§6041. General Provisions**

#### **A. Insurance Coverage**

1. Each ambulance provider shall continuously have in effect the following minimum amounts of insurance:

- a. general liability insurance in the amount of \$500,000 per occurrence and \$500,000 in the aggregate;

- b. automobile and/or aircraft liability insurance, as applicable, in the amount of \$500,000 per occurrence and \$500,000 in the aggregate; and

- c. medical malpractice liability insurance in the amount of \$500,000.

2. Notarized proof of participation in the Louisiana Patients' Compensation Fund will be accepted as medical malpractice insurance.

3. A notarized certificate of insurance verifying that the provider has the legally mandated insurance coverage.

#### **B. Infection Control and Laboratory Testing**

1. An ambulance service shall have and comply with a written infection control plan in accordance with 29 CFR 1910.120.

- a. The provider shall ensure sufficient infection control equipment and supplies are readily available for each service run.

- b. Equipment and supplies for infection control shall include, but are not limited to:

- i. gloves. Latex-free products shall be available;

- ii. face and eye protection/shields;

- iii. disinfectants and waterless hand cleaners; and

- iv. sharps containers and biohazard waste trash bags.

2. Ambulance services conducting emergency blood glucose or other necessary laboratory testing in the field shall have the appropriate Clinical Laboratory Improvement Act (CLIA) certificate, and shall be in compliance with the provisions of such.

#### **C. Communications**

1. All ambulance services shall have a dispatch facility. They may either own and operate their own facility or contract their dispatching to an appropriate emergency communications agency

2. In addition to 911, the ambulance service shall provide the department with a conventional seven-digit telephone number for their dispatch facility that may be reached 24 hours a day, 365 days a year.

3. All ambulance services shall have a Federal Communications Commission (FCC) type accepted two-way dispatching communications system. The service may either own or lease the system.

- a. All dispatch center(s) and/or point(s) of dispatch shall have a proper FCC licensed radio system or an agreement with an FCC licensed communication provider that does not allow for transmission by unauthorized users, but will provide the capability for the dispatcher, with one transmission, to be heard simultaneously by all of its ambulances/emergency medical response units within that defined geographic service area.

- b. Services that utilize multiple transmitters/tower sites shall have simultaneous communications capabilities with all units utilizing a specific transmitter/tower site.

4. Ambulance services may not dispatch their day-to-day ambulance operations over a commercial wireless telephone, pager system, frequency management records system (FMRS), or general mobile radio service (GMRS) radio system, or voice over internet protocol (VoIP) radio system.

5. All ambulance services shall be compliant with the Louisiana EMS Communications Plan.

6. All ambulance services shall be compliant with any applicable mandates of the FCC, the U.S. Department of Homeland Security, the Governor's Office of Homeland Security and Emergency Preparedness, and other applicable governmental agencies.

7. Any ambulance encountering a patient outside of its service area shall make radio or telephone contact with the

local 911 communications center, and comply with directions given.

#### D. Scanner Usage

1. Pursuant to R.S. 40:1135.7, no commercial ambulance shall make any emergency run based solely on information intercepted by use of a radio communication scanner or similar device except in cases where human life is threatened, unless that commercial ambulance has been specifically requested to respond to such an emergency. Nothing in this Section shall be construed to prohibit service to a subscriber of a commercial ambulance service.

E. All ambulance service providers shall maintain a log of all incoming calls received and outgoing calls made related to patient services and in accordance with the provider's policies and procedures.

F. At any time that the ambulance service provider has an interruption in services or a change in the licensed location due to an emergency situation, the provider shall notify HSS no later than the next business day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

### §6043. Personnel

#### A. Director of Operations

1. The director of operations (DOO), or equivalent job title, shall be designated, in writing, to supervise:

- a. all aspects of patient care;
- b. all activities of professional staff and allied health personnel; and
- c. responsible for compliance with regulatory requirements.

2. The DOO, or alternate, shall be on-site or immediately available to be on-site at all times during operating hours, and additionally as needed. If the DOO is unavailable he/she shall designate an equally qualified individual to be responsible during his/her absence.

3. The DOO shall be a licensed EMT, or above, and shall be currently licensed to practice in the state of Louisiana:

- a. with at least three years of experience as an EMT; and
- b. be a full-time employee of only one ambulance service facility. The director of operations is prohibited from simultaneous/concurrent employment.

4. The department may exempt the director of operations from the requirements of §6043.A.3.a-b if services are primarily staffed and operated by volunteers.

5. The DOO shall supervise all patient care activities to assure compliance with current standards of accepted EMS practice including, but not limited to the following:

- a. supervise the employee health program and implement policies and procedures that establish and support quality patient care;
- b. assure compliance with local, state, and federal laws, and promote health and safety of employees, patients and the community, using the following non-exclusive methods:
  - i. perform complaint investigations;
  - ii. provide orientation and in-service training to employees to promote effective ambulance services and safety of the patient, and to familiarize staff with regulatory issues, and agency policy and procedures, including but not limited to:

- (a). disaster preparedness training for an emergency due to external or internal sources; and

- (b). prohibited employee use of social media, as applicable;

- iii. perform annual competency and performance evaluations of health care personnel;

- iv. assure participation in regularly scheduled appropriate continuing education for all health professionals;

- v. assure that the care provided by the health care personnel promotes effective emergency medical care and the safety of the patient; and

- vi. assure that the ambulance service policies are enforced.

6. The DOO shall be responsible for compliance with all regulations, laws, policies and procedures applicable to the ambulance service.

7. The DOO shall also perform the following duties:

- a. implement personnel and employment policies to assure that only qualified personnel are hired:

- i. licensing and/or certification (as required by law) shall be verified prior to employment and annually thereafter, and records shall be maintained to support competency of all allied health personnel;

- b. implement policies and procedures that establish and support quality patient care;

- c. be on-site during business hours or immediately available by telecommunications when off-site and be available after hours as needed;

- d. be responsible for and direct the day-to-day operations of the ambulance service facility, inclusive of ensuring emergency service vehicles are well-maintained and have personnel, equipment and supplies sufficient for each service run and in accordance within the scope of practice for emergency medical technicians;

- e. act as liaison among staff, patients and the community;

- f. designate, in writing, an individual who meets the qualifications of director of operations to assume the authority and the control of the ambulance service if the director of operations is unavailable; and

- g. designate policies governing the day-to-day provisions of the ambulance service.

8. The DOO shall refer to the Louisiana Emergency Medical Services Commission, or other authority of competent jurisdiction, any licensed employee who has been proven to have committed any of the following:

- a. selling, attempting to sell, falsely obtaining, or furnishing any professional certification document;

- b. conviction of a crime or offense which reflects the inability of that person to provide care with due regard of the health and safety of the patient. This includes a plea of nolo contendere, regardless of the final outcome; or

- c. is guilty in the aiding and abetting of someone in violation of these regulations or the regulations of the Louisiana EMS Certification Commission; or

- d. is guilty in the violation of these regulations or the regulations of the Louisiana EMS Certification Commission.

#### B. EMTS Medical Director

1. The EMTS medical director shall:

- a. be a licensed physician, authorized to practice medicine in Louisiana and knowledgeable about emergency medical care and the emergency medical services system;

b. be the clinical supervisor of the ambulance service and have the responsibility and authority to ensure quality of care and provide guidance for all medical aspects of the EMTS; and

c. review, coordinate, and manage the clinical and medical care for all patients.

2. The EMTS medical director may be an employee or a volunteer of the agency. The agency may also contract for the services of the medical director.

3. The EMTS medical director or his/her designee shall assume overall responsibility for the medical component of the patient care program including, but not limited to:

a. responsibility for all controlled dangerous substances utilized by the ambulance service;

b. developing and coordinating procedures for the provision of emergency medical care, including all equipment and supplies necessary to provide pre-hospital emergency medical care;

c. participating in the development of the protocols or procedures for providing care; and

d. acting as a liaison between the ambulance service provider and the local health care community.

4. The EMTS medical director shall maintain a current list of all licensed emergency medical services personnel that function under his/her supervision.

5. Documentation of the EMTS medical director's credentials shall be kept on file with the service at its headquarters.

#### C. Licensed Emergency Medical Services Personnel

1. A licensed emergency medical responder shall be licensed by the Louisiana Bureau of Emergency Medical Services.

a. A licensed emergency medical responder shall:

- i. only drive the ambulance; or
- ii. assist the EMT, AEMT, or the paramedic.

2. A licensed emergency medical technician may:

- a. drive the ambulance;
- b. assist another EMT or above; and
- c. may attend the patient by himself/herself provided

the patient does not require advanced life support (ALS) services, and the assessment and interventions fall within the scope of practice of the licensed EMT.

3. A licensed advanced emergency medical technician may:

- a. drive the ambulance;
- b. assist another licensed EMT; or
- c. attend the patient by himself/herself as long as the assessment and interventions fall within the scope of practice of the licensed advanced EMT.

4. A licensed paramedic may:

- a. drive the ambulance;
- b. assist another licensed EMT; or
- c. attend the patient by himself/herself provided the

medical procedures being performed are within the scope of practice of the licensed paramedic.

5. Each licensed EMS practitioner participating in any service run shall be responsible for:

a. ensuring sufficient supplies necessary for patient care are available during the service run;

b. re-evaluating necessity and operability of equipment and supplies before and after each service run; and

c. documenting that equipment is in working order and supplies stored in the ambulance have been checked for availability in sufficient number for each service run.

D. Other Medical Personnel. Medical personnel such as physicians, registered nurses, etc., may function in an ambulance in accordance with R.S. 40:1135.1 et seq., and within the scopes of practice in accordance with the licensed practitioner's professional licensing board.

E. All medical personnel providing services in any capacity on any ambulance shall hold an American Heart Association Health Care Provider, or American Red Cross Professional Rescuer, or the equivalent cardio-pulmonary resuscitation certification.

F. All drivers shall successfully complete and hold a valid current defensive driving certificate issued by the National Safety Council or its equivalent.

#### G. Pilots

1. Pilots shall not participate in patient care activities, except for loading and unloading the patient, and incidental duties.

2. Pilots shall:

a. hold a valid appropriate commercial pilot's license from the FAA;

b. have a valid physical examination certificate from an FAA flight surgeon.

NOTE: Copies of these documents listed in a. and b. above shall be made available to the department.

c. be qualified to operate the specific aircraft; and

d. have an appropriate instrument flight rating as necessary.

#### H. Identification and Credentials

1. All personnel working on an ambulance and/or sprint vehicle shall carry with them their current chauffeur's or driver's license(s) in accordance with the Louisiana Highway Regulatory Act.

2. All medical personnel working on a ground transportation ambulance, air ambulance, or emergency medical response vehicle (sprint), shall have their level of licensure readily identifiable to the public.

#### I. Criminal History Reports

1. In accordance with R.S. 40:1203.2 et seq., all ambulance service personnel shall have criminal history reports and sexual offender checks conducted prior to an offer of employment or a contract. No personnel shall be employed in violation of the statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

### §6045. Medications

A. All medications, including IV fluids, shall be stored in a manner that ensures proper temperature control in accordance with the manufacturers guidelines and utilized prior to the expiration date.

B. All ambulance services shall have a system in place to identify and remove outdated and recalled pharmaceuticals from the service's inventory.



### C. Controlled Dangerous Substances

1. All paramedic ambulance services shall have both a Louisiana Controlled Dangerous Substance (CDS) license and a U.S. Drug Enforcement Administration (DEA) controlled substance registration. This license and registration shall be for the services, headquarters or the central location.

a. If the ambulance service is owned by a hospital that holds a CDS license and DEA registration it is exempt from this requirement.

2. All controlled dangerous substances carried on ambulances shall be under the personal control of a paramedic or kept in a substantially constructed, securely locked cabinet on the vehicle. Controlled substances may not be left unattended in unlocked medication kits.

3. All controlled substances kept at the ambulance service's central location shall be stored in a substantially constructed securely locked cabinet or a safe.

4. Ambulance services shall maintain both a dispenser's log and a perpetual inventory of their controlled substances, unless the services are part of a hospital and are maintained by the hospital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6047. Medical Protocol**

A. In parishes where the parish or component medical society has established a written pre-hospital EMS protocol for use within its jurisdiction, the ambulance service shall follow that protocol, and/or the protocols of LERN as applicable.

B. In parishes where the parish or component medical society have not established a written pre-hospital EMS protocol for use within its jurisdiction, the EMTS provider shall develop a protocol to be used by its personnel. The appropriate portions of this protocol shall be approved by the parish or component medical society.

C. Medical protocols shall include the care of:

1. cardiac arrest;
2. ventricular tachycardia;
3. supraventricular tachycardia;
4. suspected cardiogenic chest pain or suspected myocardial infarction;
5. stroke or suspected stroke;
6. bradydysrhythmias;
7. hypoglycemia;
8. anaphylactic reactions;
9. hypovolemic shock;
10. unconsciousness or altered mental status;
11. suspected drug overdose;
12. treatment induced unconsciousness, altered mental status, hypotension or respiratory depression from physician ordered or protocol appropriate paramedic administered narcotics;
13. respiratory failure or respiratory arrest;
14. active seizure;
15. hospital patient destination;
16. pre-hospital diversion;
17. patient with advanced directives;
18. mass casualty incidents;
19. injuries from weapons of mass destruction;
20. pediatric specific care; and
21. traumatic injuries.

D. The EMTS provider shall adopt the protocols established by LERN or develop an agency specific protocol with specific language related to the transportation of the following patients:

1. Acute stroke patients shall be transported to the closest appropriate primary stroke center, acute stroke ready hospital, or closest appropriate hospital if the patient exhibits a compromise of airway, breathing or circulatory function, or other potential life threatening emergency as defined by the protocols implemented by the ambulance service's medical director.

a. Acute stroke patients may also be diverted to the closest appropriate hospital by order of LERN or online medical control from the local facility, potential receiving facility or medical director.

2. Patients suffering an acute ST elevation myocardial infarction (STEMI) shall be transported to the closest appropriate STEMI receiving center or, when appropriate, a STEMI referring center.

3. In any case where the treating emergency medical technician's evaluation, according to protocol, indicates a potentially unstable condition or potential medical emergency that, if traveling the extra distance to the recommended appropriate facility, could put the patient at higher risk, the emergency medical technician in his/her discretion may divert to the nearest appropriate facility.

E. All protocols shall:

1. meet or exceed the requirements of these licensing standards and all applicable federal, state and local laws;
2. be consistent with the current National EMS Education Standards scope of practice and the rulings of the Louisiana EMS Certification Commission;
3. be reviewed annually by the licensed agency's EMTS medical director, or the parish medical society; and
4. be immediately available to the department.

F. Ambulance services are accountable for assuring compliance with applicable protocols by their personnel. Exceptions to these protocols shall be reviewed on a case-by-case basis by the physician medical director.

1. Treatment decisions shall be considered given the current health status of the patient in conjunction with all of the associated risks factors including, but not limited to, distance to the nearest stroke facility.

2. Protocols may be developed, maintained, updated and utilized in an electronic format if such are viewable as needed, have a back-up system in place and all staff is trained in usage, as applicable.

G. Ambulance services shall produce, and provide to all personnel, a policy and procedures manual governing the service's operation and shall hold all personnel in compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6049. Records**

A. There shall be a permanent record of each patient encounter made by the ambulance service. These records may be maintained as hard copy and/or electronically. The record shall be maintained to assure that the medical treatment of each patient is completely and accurately documented. Records shall be readily available and systematically organized to facilitate the compilation and copying of such information.

B. The record of each patient encounter shall include at a minimum:

1. pertinent demographic information about the patient;
2. location of the response;
3. date and time of response;
4. situation;
5. patient's chief complaint;
6. patient's signs and symptoms;
7. a synopsis of the assessment of the patient to include both the initial and complete assessment of the patient;
8. vital signs;
9. pertinent past medical history;
10. any interventions or treatments conducted;
11. transport destination and arrival time if applicable; and
12. any other significant information that pertains to the patient or to the response.

C. Safeguards shall be established and implemented to maintain confidentiality and protection of the medical record from fire, water, or other sources of damage.

D. Safeguards shall be established and implemented to maintain the confidentiality and protection of all medical records in accordance with the Health Insurance Portability and Accountability Act (HIPAA) regulations.

E. The department shall have access to all business records, patient records or other documents maintained by, or on behalf of the provider, to the extent necessary to ensure compliance with this Chapter. Ensuring compliance includes, but is not limited to:

1. permitting photocopying of records by the department; and
2. providing photocopies to the department of any record or other information the department may deem necessary to determine or verify compliance with this Chapter.

F. The provider shall keep patient records for a period of six years after the patient encounter. The patient records shall:

1. remain in the custody of the provider;
2. be easily retrievable, accessible and available to surveyors, as requested; and
3. not be disclosed or removed unless authorized by law or regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6051. Emergency Preparedness**

A. All ambulance services shall have an all hazards disaster plan on file that has been approved by their local Office of Emergency Preparedness and/or Homeland Security shall be in compliance with the statewide plan developed by the BEMS.

B. All ambulance services shall have disaster mutual aid agreements with all ambulance services that are located in the same LDH established region(s) that the ambulance service operates in.

C. All ambulance services shall have appropriate medical protocols as a part of their disaster plan.

D. All ambulance services shall have an emergency communications plan.

E. All ambulance services shall have policies and procedures addressing emergency preparedness, inclusive of training of all employees, either contracted or directly

employed. Such shall be reviewed and approved at least annually by the ambulance service's governing body and medical director.

F. All ambulance services shall have *Safe Haven* relinquishment policies and procedures, in accordance with the applicable *Louisiana Safe Haven* statutes, which shall be reviewed and approved at least annually by the EMTS' governing body and medical director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6053. Quality Assurance**

A. The ambulance service shall have an on-going comprehensive, integrated, self-assessment quality improvement process which provides assurance that patient care is provided at all times in compliance with accepted standards of professional practice.

B. The ambulance service shall have written plans, policies and procedures addressing quality assurance.

C. The ambulance service shall monitor and evaluate its resource allocation regularly to identify and resolve problems with the utilization of its services, facilities and personnel.

D. The ambulance service shall follow a written plan for continually assessing and improving all aspects of operations which include:

1. goals and objectives;
2. the identity of the person responsible for the program;
3. a system to ensure systematic, objective regular reports are prepared and distributed to the EMTS' governing body and any other committees as directed by the governing body;
4. the method for evaluating the quality and the appropriateness of care;
5. a method for resolving identified problems; and
6. a method for implementing practices to improve the quality of patient care.

E. The plan shall be reviewed at least annually and revised as appropriate by the EMTS medical director and director of operations.

F. Quality assessment and improvement activities shall be based on the systematic collection, review and evaluation of data which, at a minimum, includes:

1. services provided by professional and volunteer staff;
2. audits of patient charts;
3. reports from staff, volunteers and patients/clients about services;
4. concerns or suggestions for improvement in services;
5. organizational review of the ambulance service program;
6. patient/family evaluations of care; and
7. high-risk, high volume and problem-prone activities.

G. When problems are identified in the provision of ambulance care, there shall be:

1. evidence of corrective actions, including ongoing monitoring;
2. revisions of policies and procedures, as appropriate; and
3. educational intervention and changes in the provision of services, as appropriate.

H. The effectiveness of actions taken to improve services or correct identified problems shall be evaluated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S. 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

### **Subchapter C. Emergency Vehicles—Ground Transportation**

#### **§6061. General Provisions**

A. All ground transportation emergency vehicles utilized by ambulance services shall be in compliance with the Louisiana Motor Vehicle Regulatory Act and designated as one of the following:

1. emergency medical response sprint vehicle; or
2. ambulance ground transportation service.

B. All emergency vehicles ground transportation services shall be insured in accordance with R.S.40:1135.9 et seq.

C. An ambulance service may rent or borrow a vehicle for up to 90 days without having it inspected or pay certification fees. However, the vehicle shall be subject to spot check inspection if necessary. The vehicle shall be in compliance with R.S.32:1 et seq., and the provisions of this Subchapter.

D. Unless an ambulance or a sprint vehicle is obtained for less than 90 days, it shall be registered in the ambulance service's name.

E. All emergency ground transportation vehicles shall have permanent signage indicating the name of the provider and the unit number. All numbering and lettering shall be reflective and be at least 3 inches high or greater. If a logo is used it shall be 6 inches or greater in size. This shall appear on the rear and on both sides of the vehicle.

1. Vehicles borrowed or rented for less than 90 days are exempt from this permanent signage requirement.

F. Emergency Warning Lights. These lights shall be mounted as high and as widely spaced laterally apart as practicable.

1. There shall be two alternating flashing red lights on the front of the vehicle mounted at the same level.

2. There shall be two alternating flashing red lights on the rear of the vehicle mounted at the same level.

a. These front and rear lights shall have sufficient intensity to be visible at 500 feet in normal sunlight.

3. The following exceptions apply:

a. Any authorized emergency vehicle may be equipped with a large revolving red light on the roof instead of alternating flashing red lights on the front. This light shall be discernible in all directions and have sufficient intensity to be visible at 500 feet in normal sunlight.

b. Authorized emergency medical response vehicles of organized fire companies may be equipped with a large red and white light on the roof encased in a clear dome, instead of the large red light on the roof. This light shall be discernible in all directions and have sufficient intensity to be visible at 500 feet in normal sunlight.

G. Audible Warning Signals. Each emergency medical response vehicle or ambulance shall have a siren, exhaust whistle, or bell capable of giving an audible signal sufficient to warn motorists of its approach (audible up to 500 feet).

H. Emergency medical response vehicles and ambulances shall have passenger restraints systems/seat belts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S. 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6063. Emergency Medical Response Vehicles (Sprint Vehicles)**

A. Emergency Medical Response Vehicle Qualifications. The vehicle may be on either an automobile or truck chassis, have four or more wheels and shall have the following external markings:

1. all numbering and lettering shall be reflective;
2. the unit number shall be displayed in numerals 3 inches high or greater on the rear and both sides of the vehicle;
3. the agency's name shall appear on both sides of the vehicle in lettering 3 inches high or greater, or with a logo that is 6 inches or greater in size;
4. the agency's name or logo shall appear on the trunk or rear door in lettering 3 inches high. Agency logos shall be specific to the agency and on file with the department; and
5. the vehicle's markings shall indicate its designation as an emergency medical response vehicle such as sprint car, supervisor, chief, special services, etc. No markings on the vehicle may imply that it is an ambulance.

#### **B. Equipment and Supplies**

1. All vehicle units shall have a FCC type accepted two-way radio communication system for day-to-day communications. The emergency medical response vehicle's dispatch center(s) and/or point(s) of dispatch shall be capable of interactive two-way radio communications within all of the service's defined area.

2. In addition to the day-to-day communication system, all emergency medical response vehicles shall have a two-way radio with disaster communications capability that is compatible with the Statewide Louisiana Wireless Information Network (LWIN) system, with the following zones required:

- a. LERN;
- b. BEMS; and
- c. statewide interoperability channels.

3. Direct communication with a physician and hospital shall be conducted through an appropriate system sufficient to ensure adequate communication, such as:

- a. a radio compatible with the statewide LWIN system; or
- b. wireless telephone; or
- c. radio telephone switch station (RTSS); or
- d. med. 10 system, etc.

4. All emergency medical response vehicles shall be equipped with at least the following injury prevention equipment:

- a. fire extinguishers;
- b. reflective vests and traffic signaling devices;

- c. flashlights;
- d. U.S. DOT Hazardous Materials Guidebook for reference;
- e. hard hats and safety goggles (ANZI spec) or fire fighter's helmet with face shield; and
- f. leather or nomex gauntlet gloves.

5. All emergency medical response vehicles shall have basic life support equipment and medical supplies as determined by the EMTS medical director and governing body who have developed policies and procedures to maintain, update or not carry certain medical supplies and equipment as medically indicated or contraindicated for their service area and have documentation available to support the determination. Such basic life support equipment and medical supplies shall be:

- a. consistent with the standards of practice for the EMS practitioner;
- b. consistent with the density of the population served and geographic conditions of the region; and
- c. consistent with the recommendations of the scope of practice for emergency medical technicians established in R.S. 40:1133.14, inclusive of but not limited to the following:
  - i. drugs;
  - ii. suction;
  - iii. oxygen equipment;
  - iv. cardiopulmonary resuscitation equipment;
  - v. basic trauma equipment; and
  - vi. any other equipment required by law that shall be maintained on the emergency medical response vehicle.

6. All emergency medical response vehicles that are not staffed and equipped to the paramedic level shall carry an automated external defibrillator (either automatic or semi-automatic) with the appropriate lead cables and at least two sets of the appropriate disposable electrodes. If the automated defibrillator is also capable of manual defibrillation, an appropriate lock out mechanism (such as an access code, computer chip, or lock and key) to prevent unauthorized use of the device by those persons not authorized to manually defibrillate shall be an integral part of the device.

7. All advanced life support emergency medical response vehicles shall carry equipment and medical supplies dependent on level of licensure of personnel and as determined by the EMTS medical director and governing body who have developed policies and procedures to maintain, update or not carry certain advanced life support equipment and medical supplies as medically indicated or contraindicated for their service area and have documentation available to support the determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§6065. Ground Transportation Ambulances**

A. Any vehicle used as a ground transportation ambulance shall be designed and constructed by the manufacturer as such and shall not, except in a disaster or life-threatening emergency situation:

- 1. transport more than one unrelated patient per trip; and
- 2. transport more than the intended patient capacity of the vehicle.

B. The following medical and safety equipment are requirements for certification of all ground transportation ambulances operating within the state of Louisiana.

1. All ground transportation ambulances shall have a national standard public safety two-way radio communication (day-to-day communications). The ambulance dispatch center(s) and/or point(s) of dispatch shall be capable of interactive two-way communications within all of the service's defined area.

2. Two-way radio with disaster communications shall be compatible with the statewide LWIN system, with the following zones required:

- a. LERN;
- b. BEMS; and
- c. statewide interoperability channels.

3. Direct communication with a physician and hospital shall be conducted through an appropriate system sufficient to ensure adequate communication, such as:

- a. a radio compatible with the statewide LWIN system; or
- b. wireless telephone; or
- c. radio telephone switch station (RTSS); or
- d. med. 10 system, etc.

4. All ground transportation ambulances shall carry basic life support equipment and medical supplies as determined by the EMTS medical director and governing body who have developed policies and procedures to maintain, update or not carry certain medical supplies and equipment as medically indicated or contraindicated for their service area and have documentation available to support the determination.

5. All ground transportation ambulances shall be equipped with the following all hazards emergency supplies:

- a. fire extinguishers;
- b. blankets;
- c. US DOT Hazardous Materials Guidebook for reference;
- d. hard hats and safety goggles (ANZI 37.1 or NFPA approved fire fighter turn out gear);
- e. leather or nomex gauntlet gloves;
- f. incident command/safety vest with florescent trim and appropriate logos;
- g. stretcher(s), wheeled, multi-level;
- h. one set of stretcher straps with at least three points of confinement, including shoulder harness per stretcher; and

6. All ambulances that are not staffed and equipped to the licensed paramedic level shall carry:

- a. an automated external defibrillator (either automatic or semi-automatic) with the appropriate lead cables and at least two sets of the appropriate disposable electrodes, for adult and non-adult patients, for monitoring and defibrillation. If the automated defibrillator is also capable of manual defibrillation, an appropriate lock-out mechanism (such as an access code, computer chip, or lock and key) to prevent unauthorized use of the device by those persons not authorized to manually defibrillate must be an integral part of the device;
- b. one epinephrine auto injector adult, .30 mg;
- c. one epinephrine auto injector, pediatric.

7. All advanced life support ground transportation ambulances shall carry basic equipment and medical supplies as well as additional advanced equipment and medical

supplies appropriate to level of licensure of personnel staffing the ambulance.

a. Such equipment and supplies shall be determined by the EMTS medical director and governing body who have developed policies and procedures to maintain, update or delete certain advanced life support equipment and medical supplies as medically indicated or contraindicated for their service area and have documentation available to support the determination; and

b. Such equipment and supplies shall be consistent with the scope of practice for emergency medical technicians established in R.S. 40:1133.14, inclusive of but not limited to the following:

- i. drugs;
- ii. suction;
- iii. oxygen equipment;
- iv. cardiopulmonary resuscitation equipment;
- v. basic trauma equipment; and
- vi. any other equipment required by law that shall

be maintained on the ambulance.

C. All ground transportation ambulances shall have functional temperature control in the patient compartment. Such temperature control equipment shall function within the vehicle manufacturer's recommended guidelines or specifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S.40:1135.1 and R.S. 40:1135.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **Subchapter D. Emergency Vehicles—Aircraft Transportation**

##### **§6071. General Provisions**

A. All ambulance providers whose aircraft are utilized as air ambulances shall provide the department with copies of the air ambulances' FAA Certificate of Registrations and Certificate of Air Worthiness. Upon request, the provider shall make their maintenance logs available to the department.

B. Certifications of all air ambulance personnel shall meet FAA requirements and local pilot and medical personnel staffing protocols.

C. All air ambulances shall be equipped with the safety equipment required by the FAA and shall be maintained and remain operable.

D. In accordance with R.S. 40: 1135.8 et seq., all air ambulances shall be equipped with the medical and safety equipment established under rules promulgated by the Department of Health and based upon the recommendations of an advisory committee. The medical and safety equipment shall conform to local protocol as established by the medical director of the air ambulance service.

E. Air ambulances shall carry the medical equipment that is mandated to them in protocol by the EMTS medical director and approved by the EMTS governing body and, at a minimum, the medical equipment and supplies equivalent to such required by ground ambulance transportation.

F. All air ambulance services shall carry advanced life support equipment and medical supplies dependent on level of licensure of personnel (paramedic level) and as

determined by the EMTS medical director and governing body who have developed policies and procedures to maintain, update or delete certain advanced life support equipment and medical supplies as medically indicated or contraindicated for their service area and have documentation available to support the determination.

G. All air ambulances shall be staffed to the advanced life support (paramedic) level. The paramedic(s) and each member of the flight team are each responsible to ensure that equipment and supplies are readily available and operable, as appropriate, for each flight service run to meet the needs of the patients served.

H. All air ambulances shall have functional temperature control in the patient compartment. Such temperature control equipment shall function within the aircraft's manufacturer's recommended guidelines or specifications.

I. If a service provides interhospital air transport, air transport from hospital to another facility, air transport from hospital to home, or similar air transport, the service must certify that a medical director is employed to advise the service on the appropriate staffing, equipment, and supplies to be used for the transport of patients aboard an air ambulance. J. Provisions in this Section shall not be construed to prohibit, limit or regulate random mercy flights made by a person or corporation in privately or publicly owned aircraft who may on occasion transport individuals who may need medical attention during transport, or human organs intended for transplantation including, but not limited to the heart, lungs, kidneys, liver and other soft tissue and bones, on either a not-for-profit basis or gratuitously.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S.40:1135.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

##### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a no impact on family functioning, stability or autonomy as described in R.S. 49:972.

##### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual or family poverty in relation to individual or community asset development as described in R.S. 49:973.

##### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service and no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

## Public Comments

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to [MedicaidPolicy@la.gov](mailto:MedicaidPolicy@la.gov). Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

## Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, October 25, 2018 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Emergency Medical Transportation Services—Licensing Standards

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 18-19. It is anticipated that \$9,936 will be expended in FY 18-19 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not affect revenue collections since the licensing fees, in the same amounts, will continue to be collected.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

In compliance with Act 789 of the 2012 Regular Session, Act 106 of the 2017 Regular Session, and Act 557 of the 2018 Regular Session of the Louisiana Legislature, this proposed Rule repeals and replaces the provisions governing the licensing standards for emergency medical transportation services (EMTS) in order to: 1) clarify and align these provisions with the corresponding legislative authorities; 2) ensure that the provisions are consistent with standard language used in other health care licensing regulations; 3) promulgate the provisions in a clear and concise manner in the Louisiana Administrative Code. It is anticipated that implementation of this proposed rule will not result in economic costs to EMTS providers in FY 18-19, FY 19-20 and FY 20-21, but will be beneficial by providing accurate, clearly identified licensing standards.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Cecile Castello  
Health Standards Section Director  
1809#039

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health Bureau of Health Services Financing

#### Expedited Licensing Process for Healthcare Facilities and Providers (LAC 48:I.Chapter 41)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 48:I.Chapter 41 as authorized by R.S. 36:254 and R.S. 40:2006.2. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 324 of the 2018 Regular Session of the Louisiana Legislature enacted R.S. 40:2006.2 which directed the Department of Health to establish an expedited licensing process and fees for healthcare facilities and providers licensed by the department. In compliance with the requirements of Act 324, the Department of Health, Bureau of Health Services Financing proposes to adopt provisions governing an expedited licensing process and fees for healthcare facilities and providers licensed by the department.

### Title 48

### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

#### Subpart 3. Licensing and Certification

#### Chapter 41. Expedited Licensing Process for

#### Healthcare Facilities and Providers

#### Licensed by the Department of Health

#### §4101. Definitions

*Applicant*—any person, partnership, corporation, unincorporated association or other legal entity currently operating, or planning to operate, any of the health care facilities or providers licensed by the Department of Health.

*Applicant Representative*—the person specified by the applicant on the application form authorized to respond to inquiries from the Department of Health regarding the expedited licensing process and to whom written notifications are sent relative to the status of the expedited licensing application.

*Approval*—a determination by the Department of Health that an application meets the criteria of the expedited licensing process.

*Department*—the Louisiana Department of Health (LDH).

*Health Standards Section (HSS)*—the section in the Department of Health responsible for licensing health care facilities and agencies, certifying facilities and agencies that apply for participation in the Medicaid (titles XIX and XXI) and Medicare (title XVIII) programs, and conducting surveys and inspections.

*Licensing*—deemed to include initial licensing of a provider or facility, licensure upon a change of ownership, licensing due to relocation or replacement facility, or licensing due to adding locations, off-sites, satellites, beds, units, fleet additions or services.

*Notification*—deemed to be given on the date on which an applicant representative receives notice from LDH of the expedited license determination, either electronically or by

certified mail to the last known address of the applicant representative.

**Readiness Date**—the date that the applicant indicates to the HSS field office assigned scheduler that the facility or provider is ready for the licensing survey to be conducted by the department.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:2006.2.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Office of the Secretary Bureau of Health Services Financing, LR 44:

### **§4103. General Provisions**

A. Any person, partnership, corporation, unincorporated association or other legal entity currently operating, or planning to operate, any of the health care facilities or providers licensed by the department may seek an expedited licensing process as provided for in this Chapter.

B. The provisions of this Chapter shall apply to an applicant provider or facility for any of the health care facility or provider types licensed by the department.

C. The expedited licensing process provided for in this Chapter is at the discretion of the applicant provider or facility requesting such expedited process.

1. A request for the expedited licensing process is voluntary.

2. An applicant provider or facility shall not be delayed from the usual licensing and/or survey scheduling process and timeframe, if the expedited licensing process is not requested.

D. The department shall ensure that no applicant provider or facility seeking approval to apply for licensure pursuant to a pre-licensing facility need review approval process is affected by another provider of the same license type choosing the expedited licensing process instead of the regular licensing process.

E. The department shall not utilize existing employees who conduct regular licensing surveys to conduct any expedited licensing survey.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and R.S. 40:2006.2.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

### **§4105. Expedited Licensing Applications and Fees**

A. Requests for expedited licensing applications shall be submitted to the LDH Health Standards Section (HSS) on the forms indicated for that purpose, containing such information as the department may require, and shall be accompanied by the specified fee as established in Paragraph E of this Section.

B. The applicant shall designate a representative on the expedited licensing process application.

1. The designated applicant representative shall be the only person to whom HSS will send written notification in matters relative to the status of the expedited licensing process.

2. If the applicant representative or his/her address changes at any time during the licensing process, it is the responsibility of the applicant to notify HSS in writing of such change.

C. Documentation and correspondence related to the expedited licensing process may be submitted and received via electronic transmission to shorten the timeframe of the process.

D. The expedited licensing process fee is required at the time that the application is submitted to the department. The expedited licensing process fee shall be:

1. made payable to the Louisiana Department of Health; and

2. made in the manner required by the department on the expedited licensing process application.

E. The expedited licensing process fee shall be determined by the complexity and acuity of the requested licensing process and shall be assessed on a tiered basis pursuant to §4107 of this Chapter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and R.S. 40:2006.2.

**HISTORICAL NOTE:** Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

### **§4107. Expedited Licensing Survey Types and Tiers**

A. The fees associated with the expedited licensing process shall be assessed according to the following tiers:

1. Tier 1. Expedited licensing fee is set at \$7,000.

2. Tier 2. Expedited licensing fee is set at \$6,000.

3. Tier 3. Expedited licensing fee is set at \$5,000.

B. Tier 1 expedited licensing processes include, but are not limited to, the following:

1. initial licensing of a hospital or off-site location of a hospital;

2. licensing of a replacement facility or location (or relocation) of the main campus of a hospital;

3. licensing of a replacement facility or location (or relocation) of an off-site campus of a hospital that has any of the following:

a. licensed beds;

b. surgical services; or

c. an emergency department; and

4. initial licensing of the following:

a. an ambulatory surgical center (ASC);

b. an end stage renal disease (ESRD) facility;

c. a rural health clinic (RHC);

d. a nursing facility (NF); or

e. a home and community-based services (HCBS) provider or an off-site or satellite location of the provider.

C. Tier 2 expedited licensing processes include, but are not limited to, the following:

1. initial licensing of the following:

a. an adult residential care provider (ARCP) level 1, 2, 3 or 4;

b. a crisis receiving center (CRC);

c. an intermediate care facility for people with developmental disabilities (ICF/DD);

d. a pediatric day health care (PDHC) facility;

e. a home health agency (HHA) or an off-site or satellite location of a HHA;

f. a hospice agency, an off-site or satellite location of a hospice agency or an inpatient hospice facility;

g. a psychiatric residential treatment facility (PRTF);

h. a therapeutic group home (TGH);

i. a behavioral health services provider (BHSP);

j. an adult day health care (ADHC) facility.

k. a forensic supervised transitional residential and aftercare (FSTRA) facility;

l. a pain management clinic (PMC);

m. an adult brain injury (ABI) facility;

n. an emergency medical transportation services (EMTS) provider; or

- o. any other provider or facility licensed by LDH;
  - 2. licensing of a replacement facility or location (or relocation) of the following:
    - a. an ASC;
    - b. an ESRD facility;
    - c. an RHC;
    - d. a CRC;
    - e. a NF; or
    - f. an HCBS provider or an off-site or satellite location of the provider; and
  - 3. licensing of additional units, services or beds, or other action at an existing licensed hospital, ASC, ESRD facility or NF that requires a physical environment survey.
- D. Tier 3 expedited licensing processes include, but are not limited to, the following:
- 1. licensing of a replacement facility (or relocation) for the following:
    - a. an ICF/DD;
    - b. a PDHC;
    - c. an ADHC facility;
    - d. an ARCP level 1, 2, 3 or 4;
    - e. an HHA or an off-site or satellite location of a HHA;
    - f. a hospice agency or an off-site or satellite location of hospice agency or an inpatient hospice facility;
    - g. a PRTF;
    - h. a TGH;
    - i. a BHSP;
    - j. a FSTRA facility;
    - k. a PMC;
    - l. an ABI facility; or
    - m. any other provider or facility licensed by LDH;
- and

2. licensing additional units, services, beds, or other action an existing licensed ICF/DD, PDHC, HCBS provider, ADHC center, ARCP (levels 1, 2, 3 and 4), PRTF, TGH, BHSP, CRC, FSTRA facility, ABI facility, or other provider or facility licensed by the department that requires a physical environment survey, or a fleet addition for an EMTS provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2006.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§4109. Expedited Licensing Application Review Process**

A. If an applicant provider or facility submits an expedited licensing process application and pays all applicable fees in the required manner, the department shall prioritize the application. After priority review of the application, the department shall:

- 1. notify the applicant provider or facility of any missing documentation or information; or
- 2. notify the applicant of the approval of the completed expedited licensing application packet.

B. The department shall notify the applicant representative, upon approval of the completed expedited licensing application packet, that the applicant shall provide a readiness date for the expedited survey to the appropriate HSS field office.

C. The applicant shall not contact the HSS field office to schedule the expedited survey until notified of approval as provided for in Paragraphs A and B of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2006.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§4111. Expedited Licensing Survey Process**

A. Once the expedited licensing application packet has been approved, the department shall conduct the expedited licensing survey within 10 working days of the readiness date indicated by the applicant provider or facility, or such other time period to which the provider has agreed.

B. The expedited licensing survey shall be conducted in accordance with this Subchapter and applicable published licensing statutes, rules and regulations for the particular health care provider or facility type for which the applicant has applied.

C. The expedited licensing survey shall be scheduled and conducted in an expedited manner pursuant to the usual survey process, protocols and procedure.

D. The department shall provide written notification to the applicant representative of the results of the expedited licensing survey within 10 working days of the survey exit date. This notification may be made by electronic transmission.

1. The written notification of the expedited survey results shall include any licensing deficiencies, requirements for a plan of correction, and review and/or appeal rights as to the deficiencies, if applicable, pursuant to applicable licensing statutes, rules and regulations.

2. If deficiencies are cited at the expedited licensing survey, the department may, at its option:

- a. require a plan of correction and conduct a follow-up licensing survey;
- b. issue a provisional license, pursuant to applicable licensing regulations; or
- c. issue a license denial, including appeal rights, pursuant to applicable licensing regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2006.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

#### **§4113. Expedited Licensing Survey Refunds**

A. The department shall refund the expedited licensing process fee amount paid by an applicant provider or facility if the survey is not conducted within the time periods specified in §4111.A, unless such failure to conduct the survey is due to the unavailability of the facility or provider.

B. If the applicant facility or provider fails to be ready when the department begins to conduct the expedited licensing survey, the survey will be ended, no refund of the expedited licensing fee will be due, and the applicant facility or provider shall have the choice to:

- 1. re-submit a new expedited licensing process application and applicable fee; or
- 2. submit a regular licensing process application and applicable fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2006.2.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.



### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

### **Public Comments**

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to [MedicaidPolicy@la.gov](mailto:MedicaidPolicy@la.gov). Ms. Castello is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Thursday, October 25, 2018 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Expedited Licensing Process for Healthcare Facilities and Providers**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 18-19. It is anticipated that \$1,620 will be expended in FY 18-19 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will increase revenue collections by an indeterminable amount due to a potential increase in licensing fees collected from healthcare providers who may choose to undergo the expedited licensing process.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule, in compliance with Act 324 of the 2018 Regular Session of the Louisiana Legislature, proposes to adopt provisions governing an expedited licensing process and fees for healthcare facilities and providers licensed by the Louisiana Department of Health. It is anticipated that implementation of this proposed rule will result in increased economic costs to healthcare providers and facilities that choose the expedited licensing process in FY 18-19, FY 19-20 and FY 20-21. Since there is no way to determine the number of providers that may select this option or the hours needed to complete the required licensing surveys, the amount of the increase is indeterminable.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Jen Steele  
Medicaid Director  
1809#040

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## **NOTICE OF INTENT**

### **Department of Health Bureau of Health Services Financing**

Federally Qualified Health Centers  
Reimbursement Methodology  
Mammography Separate Payments  
(LAC 50:XI.10703)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XI.10703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing currently provides reimbursement for services rendered by federally qualified health centers (FQHCs) on a per visit basis under a prospective payment system (PPS) methodology. The department now proposes to amend the provisions governing the reimbursement methodology for FQHCs in order to implement a payment methodology to allow reimbursement for mammography screening and diagnosis services outside of the PPS rate.

### **Title 50**

## **PUBLIC HEALTH—MEDICAL ASSISTANCE**

### **Part XI. Clinic Services**

#### **Subpart 13. Federally-Qualified Health Centers**

#### **Chapter 107. Reimbursement Methodology**

#### **§10703. Alternate Payment Methodology**

A. - C. ...

D. Effective for dates of service on or after January 1, 2019, FQHCs shall be reimbursed a separate payment outside of the prospective payment system (PPS) rate for the following services:

1. Reserved.

2. Mammogram Screening and Diagnosis

a. Reimbursement for mammogram screening and diagnostics shall be a flat fee on file based on Medicaid covered current procedural terminology (CPT) code(s), in

addition to the PPS rate for the associated encounter/office visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:1033 (June 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972, as it reduces the number of visits required for Medicaid recipients to receive a mammogram and diagnostic services in an FQHC which aids in detecting cancer and related illnesses earlier.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it decreases the number of visits required to receive a mammogram and diagnostic services, which will reduce unexpected costs and financial burdens for families.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Thursday, October 25, 2018 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Federally Qualified Health Centers Reimbursement Methodology—Mammography Separate Payments**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will result in estimated state general fund net programmatic savings of approximately \$31,721 for FY 18-19, \$106,468 for FY 19-20 and \$114,343 for FY 20-21 as a result of a direct correlation in increased access to mammograms which is expected to reduce Medicaid costs for physician services, and a reduction in federally qualified health center (FQHC) expenditures since fewer visits will be required to receive this service. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 18-19 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.67 percent in FY 18-19 and 65.79 percent in FYs 19-20 and 20-21 for the projected non-expansion population, and an FMAP rate of 93.5 percent in FY 18-19, 91.5 percent in FY 19-20 and 90.0 percent in FY 20-21 for the projected expansion population.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will reduce federal revenue collections by approximately \$179,189 for FY 18-19, \$538,977 for FY 19-20 and \$537,249 for FY 20-21. It is anticipated that \$216 will be collected in FY 18-19 for the federal share of the expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.67 percent in FY 18-19 and 65.79 percent in FYs 19-20 and 20-21 for the projected non-expansion population, and an FMAP rate of 93.5 percent in FY 18-19, 91.5 percent in FY 19-20 and 90.0 percent in FY 20-21 for the projected expansion population.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed Rule amends the provisions governing the reimbursement methodology for FQHCs in order to implement a payment methodology to allow reimbursement for mammogram screenings and diagnostic services outside of the prospective payment system (PPS) rate. This proposed rule will be beneficial to Medicaid recipients as it reduces the number of FQHC visits required to receive mammogram screening and diagnostic services, as well as early detection of breast cancer. There are no anticipated economic costs to FQHCs; although, there may be a reduction in the number of FQHC visits required to receive a mammogram which could reduce payments to FQHCs. However, we anticipate the rule will be beneficial to FQHCs by allowing them to receive reimbursement for mammograms, in addition to the current PPS encounter rate. Although this rule increases payments for mammograms, we anticipate it will result in a net reduction in Medicaid programmatic expenditures by approximately \$211,342 for FY 18-19, \$645,445 for FY 19-20 and \$651,592 for FY 20-21 as a result of reduced payments for encounter visits associated with mammograms and offsetting savings in costs associated with breast cancer avoidance due to early detection and treatment, and a reduction in the number of encounters/office visits.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele  
Medicaid Director  
1809#041

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

**Department of Health  
Bureau of Health Services Financing  
and  
Office of Aging and Adult Services**

Home and Community-Based Services Waivers  
Adult Day Health Care Waiver  
(LAC 50:XXI.Chapters 21-27)

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:XXI.Chapters 21-27 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services (OAAS) propose to amend the provisions governing the Adult Day Health Care (ADHC) Waiver in order to: 1) align these provisions with the waiver approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS); 2) ensure consistency across OAAS waivers and the standard language used in other OAAS administrative rules; 3) provide the option for participants to designate a responsible representative; 4) amend the criteria for priority offers to specify priority for individuals admitted to, or residing in, nursing facilities who have Medicaid as the sole payer source; and 5) allow OAAS to grant exceptions to waiver discharges due to qualifying circumstances.

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part XXI. Home and Community-Based Services Waivers

#### Subpart 3. Adult Day Health Care Waiver

#### Chapter 21. General Provisions

#### §2101. Introduction

A. These standards for participation specify the requirements of the Adult Day Health Care (ADHC) Waiver Program. The program is funded as a waived service under the provisions of Title XIX of the Social Security Act and is administered by the Department of Health (LDH).

B. - C. ...

D. Each individual who requests ADHC waiver services has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the individual to act on his/her behalf in the process of accessing and/or maintaining ADHC waiver services.

1. The appropriate form authorized by the Office of Aging and Adult Services (OAAS) shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not take away the right of the individual to continue to transact business on his/her own behalf nor does it give the representative any legal authority other than as specified in the designation form.

b. The written designation is valid until revoked by the individual granting the designation.

i. To revoke the written designation, the revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:

a. assist and represent the individual in the assessment, care plan development and service delivery processes; and

b. aid the participant in obtaining all of the necessary documentation for these processes.

3. No individual, unless granted an exception by OAAS, may concurrently serve as a responsible representative for more than two participants in OAAS-operated Medicaid home and community-based service programs including:

- the Program of All-Inclusive Care for the Elderly;
- long-term personal care services (LT-PCS);
- the Community Choices Waiver; and
- the Adult Day Health Care Waiver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:623 (June 1985), repromulgated LR 13:181 (March 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1149 (September 1997), repromulgated LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2161 (October 2008), repromulgated LR 34:2565 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2494 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:

#### §2105. Request for Services Registry

#### [Formerly §2107]

A. The Department of Health is responsible for the Request for Services Registry, hereafter referred to as “the registry”, for the ADHC Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll free telephone number, which shall be maintained by LDH.

B. Individuals who desire their name to be placed on the ADHC waiver registry shall be screened to determine whether they :

- meet nursing facility level of care; and
- are members of the target population as identified in the federally-approved waiver document.

C. Only individuals who pass the screening in §2105.B shall be added to the registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office

of Aging and Adult Services, LR 32:2256 (December 2006), LR 34:2161 (October 2008), repromulgated LR 34:2566 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2495 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:

#### **§2107. Programmatic Allocation of Waiver Opportunities**

A. When funding is appropriated for a new ADHC waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible ADHC waiver opportunity assignment.

B. Adult day health care waiver opportunities shall be offered to individuals on the registry according to priority groups. The following groups shall have priority for ADHC waiver opportunities in the order listed:

1. individuals with substantiated cases of abuse or neglect referred by protective services who, without ADHC waiver services, would require institutional placement to prevent further abuse and neglect;

2. individuals who have been discharged after a hospitalization within the past 30 calendar days that involved a stay of at least one night;

3. individuals admitted to, or residing in, a nursing facility who have Medicaid as the sole payer source for the nursing facility stay; and

B.4. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2162 (October 2008), repromulgated LR 34:2566 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2624 (September 2011), LR 39:2495 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:

### **Chapter 23. Services**

#### **§2301. Covered Services**

A. The following services are available to participants in the ADHC Waiver. All services must be provided in accordance with the approved plan of care (POC). No services shall be provided until the POC has been approved.

1. Adult day health care. services furnished as specified in the POC at a licensed ADHC center, in a non-institutional, community-based setting encompassing both health/medical and social services needed to ensure the optimal functioning of the participant. Services are furnished on a regularly scheduled basis, not to exceed 10 hours a day, 50 hours a week. ADHC services include those core service requirements identified in the ADHC licensing standards (LAC 48:I.4243) in addition to:

a. medical care management; and

b. transportation to and from medical and social activities (if the participant is accompanied by the ADHC center staff).

c. - j. Repealed.

2. Support Coordination. These services assist participants in gaining access to necessary waiver and other state plan services, as well as needed medical, social,

educational, housing, and other services, regardless of the funding source for these services. Support coordination agencies shall be required to perform the following core elements of support coordination services:

a. ...

b. assessment and reassessment;

c. ...

d. follow-up/monitoring;

e. critical incident management; and

f. transition/discharge and closure.

g. - l. Repealed.

3. Transition Intensive Support Coordination. These services will assist participants currently residing in nursing facilities in gaining access to needed waiver and other state plan services, as well as needed medical, social, housing, educational and other services regardless of the funding source for these services. Support coordinators shall initiate and oversee the process for assessment and reassessment, as well as be responsible for ongoing monitoring of the provision of services included in the participants approved POC.

a. This service is paid up to six months prior to transitioning from the nursing facility when adequate pre-transition supports and activities are provided and documented.

b. The scope of transition intensive support coordination shall not overlap with the scope of support coordination.

c. Support coordinators may assist participants to transition for up to six months while the participants still resides in the facility.

4. Transition Services. These services are time limited, non-recurring set-up expenses available for individuals who have been offered and approved for an ADHC waiver opportunity and are transitioning from a nursing facility to a living arrangement in a private residence where the individual is directly responsible for his/her own expenses.

a. Allowable expense are those necessary to enable the individual to establish a basic household (excluding expenses for room and board) including, but not limited to:

i. security deposits that are required to obtain a lease on an apartment or house;

ii. specific set up fees or deposits

iii. activities to assess need, arrange for and procure needed resources;

iv. essential furnishings to establish basic living arrangements; and

v. health, safety, and welfare assurances.

b. These services must be prior approved in the participant's plan of care.

c. These services do not include monthly rental, mortgage expenses, food, recurring monthly utilities charges and household appliances and/or items intended for purely diversional/recreational purposes.

d. These services may not be used to pay for furnishings or set-up living arrangements that are owned or leased by a waiver provider.

e. Support coordinators shall exhaust all other resources to obtain these items prior to utilizing the waiver.

f. Funds are available up to the lifetime maximum amount identified in the federally-approved waiver document.

B. - E. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:623 (June 1985), amended LR 13:181 (March 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1149 (September 1997), amended LR 25:1100 (June 1999), repromulgated LR 30:2036 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2162 (October 2008), repromulgated LR 34:2566 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2625 (September 2011), LR 39:2495 (September 2013), LR 40:791 (April 2014), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:

### **§2303. Individualized Service Plan**

A. All participants shall have an ADHC individualized service plan (ISP) written in accordance with ADHC licensing standards (LAC 48:I.4281).

1. - 15. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:623 (June 1985), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 13:181 (March 1987), LR 23:1150, 1156 and 1163 (September 1997), LR 28:2356 (November 2002), repromulgated LR 30:2036 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2162 (October 2008), repromulgated LR 34:2567 (December 2008), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:

### **§2305. Plan of Care**

A. The applicant and support coordinator have the flexibility to construct a plan of care (POC) that serves the participant's health, safety and welfare needs. The service package provided under the POC shall include services covered under the Adult Day Health Care Waiver, Medicaid State Plan services, and any other services, regardless of the funding source.

A.1. - B. ...

C. The POC shall contain the:

1. types and number of services (including waiver and all other services) necessary to reasonably assure health and welfare and to maintain the individual in the community;
2. individual cost of each waiver service; and
3. total cost of waiver services covered by the POC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2496 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:

## **Chapter 25. Admission and Discharge Criteria**

### **§2501. Admission Criteria**

A. Admission to the ADHC Waiver Program shall be determined in accordance with the following criteria:

1. ...
2. initial and continued Medicaid eligibility;
3. initial and continued eligibility for nursing facility level of care;
4. ...

5. reasonable assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of ADHC waiver services.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:626 (June 1985), amended LR 13:181 (March 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1153 (September 1997), repromulgated LR 30:2040 (September 2004), amended by the Department Of Hospitals, Office of Aging and Adult Services, LR 34:2163 (October 2008), repromulgated LR 34:2568 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2625 (September 2011), LR 39:2496 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:

### **§2503. Admission Denial or Discharge Criteria**

A. Admission shall be denied or the participant shall be discharged from the ADHC Waiver Program if any of the following conditions are determined.

1. The individual does not meet the target population criteria as specified in the federally approved waiver document.

2. The individual does not meet the criteria for Medicaid eligibility.

3. The individual does not meet the criteria for nursing facility level of care.

4. The individual resides in another state or the participant has a change of residence to another state.

5. Continuity of services is interrupted as a result of the participant not receiving and/or refusing ADHC waiver services (exclusive of support coordination services) for a period of 30 consecutive days.

a. Exceptions may be granted by OAAS to delay discharge if interruption is due to an acute care hospital, rehabilitation hospital, or nursing facility admission.

6. The health, safety and welfare of the individual cannot be assured through the provision of ADHC waiver services.

7. The individual/participant fails to cooperate in the eligibility determination process, POC development, or in the performance of the POC.

8. It is not cost effective or appropriate to serve the individual in the ADHC Waiver.

9. The participant fails to attend the ADHC center for a minimum of 36 days per calendar quarter.

10. The participant fails to maintain a safe and legal home environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2163 (October 2008), repromulgated LR 34:2568 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2625 (September 2011), LR 39:2496 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:

## **Chapter 27. Provider Responsibilities**

### **§2701. General Provisions**

- A. Each ADHC center shall:
1. be licensed by the Department of Health, Health Standards Section, in accordance with LAC 48:I.Chapter 42;
  2. enroll as an ADHC Medicaid provider;
  3. enter into a provider agreement with the department to provide services; and

4. agree to comply with the provisions of this Rule.

B. The provider shall not request payment unless the participant for whom payment is requested is receiving services in accordance with the ADHC Waiver program provisions and the services have been prior authorized and delivered.

C. Adult day health care waiver providers shall not refuse to serve any participant who chooses their agency unless there is documentation to support an inability to meet the participant's health, safety and welfare needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

1. - 2. ...

D. Providers must maintain adequate documentation to support service delivery and compliance with the approved POC and will provide said documentation at the request of the department, or its designee.

E. Adult day health care providers shall not interfere with the eligibility, assessment, care plan development or care plan monitoring processes with use of methods including, but not limited to:

1. harassment;
2. intimidation; or
3. threats against program participants, members of the participant's informal support network, LDH staff, or support coordination staff.

F. Adult day health care providers shall have the capacity and resources to provide all aspects of the services they are enrolled to provide in the specified licensed service area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:627 (June 1985), amended LR 13:181 (March 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 23:1155 (September 1997), LR 24:457 (March 1998), repromulgated LR 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office for Aging and Adult Services, LR 34:2164 (October 2008), repromulgated LR 34:2568 (December 2008), ), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2625 (September 2011), LR 39:2497 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:

### **§2703. Reporting Requirements**

A. Support coordinators and direct service providers, including ADHC providers, are obligated to immediately report any changes to the department that could affect the waiver participant's eligibility including, but not limited to, those changes cited in the denial or discharge criteria listed in §2503.

B. Support coordinators and direct service providers, including ADHC providers, are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the participant and completing an

incident report. The incident report shall be submitted to the department or its designee with the specified requirements within specified time lines.

C. ...

D. Adult day health care providers shall provide the participant's approved individualized service plan to the support coordinator in a timely manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 34:2164 (October 2008), repromulgated LR 34:2568 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 39:2497 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:

### **§2705. Electronic Visit Verification**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 43:74 (January 2017), repealed by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will

have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821—9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Thursday, October 25, 2018 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH  
Secretary

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Home and Community-Based Services Waivers—Adult Day Health Care Waiver**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 18-19. It is anticipated that \$2,268 (\$1,134 SGF and \$1,134 FED) will be expended in FY 18-19 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 18-19. It is anticipated that \$1,134 will be collected in FY 18-19 for the federal share of the expense for promulgation of this proposed rule and the final rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed Rule amends the provisions governing the Adult Day Health Care (ADHC) Waiver in order to: 1) align these provisions with the waiver approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services; 2) ensure consistency across Office and Aging and Adult Services (OAAS) waivers and the standard language used in other OAAS rules; 3) provide the option for participants to designate a responsible representative; 4) amend the criteria for priority offers to specify priority for individuals admitted to, or residing in, nursing facilities who have Medicaid as the sole payer source; and 5) allow OAAS to grant exceptions to waiver discharges due to qualifying circumstances. It is anticipated that implementation of this proposed rule will have no costs, but may be beneficial to ADHC waiver providers for FY 18-19, FY 19-20 and FY 20-21 by providing clear and concise provisions governing the ADHC waiver program.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Jen Steele  
Medicaid Director  
1809#042

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Health Bureau of Health Services Financing and Office of Aging and Adult Services**

Nursing Facilities  
Continued Stay Requests  
(LAC 50:II.503)

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to amend LAC 50:II.503 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services (OAAS) propose to amend the provisions governing medical certification for nursing facility admissions in order to align the requirements for continued stay requests with current OAAS policies and procedures to ensure that these provisions are promulgated in a clear and concise manner in the *Louisiana Administrative Code*.

#### **Title 50**

### **PUBLIC HEALTH—MEDICAL ASSISTANCE**

#### **Part II. Nursing Facilities**

#### **Subpart 1. General Provisions**

#### **Chapter 5. Admissions**

#### **§503. Medical Certification**

A. - A.1.b. ...

2. Continued Stay Requests

a. - a.i. ...

ii. documentation to support the request for continued stay, including the most recent MDS 3.0. A LOCET will not be accepted as sufficient evidence of medical need for an individual who has been discharged for a period of less than 14 calendar days unless:

a.ii.(a) - b. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 36:1011 (May 2010), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 43:1179 (June 2017), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 43:1179 (June 2017), LR 44:1018 (June 2018), LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

### **Public Comments**

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Thursday, October 25, 2018 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: Nursing Facilities Continued Stay Requests**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 18-19. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 18-19 for the state's administrative expense for promulgation of this proposed rule and the final rule.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will not affect revenue collections other than the federal share of the promulgation costs for FY 18-19. It is anticipated that \$216 will be collected in FY 18-19 for the federal share of the expense for promulgation of this proposed rule and the final rule.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed Rule amends the provisions governing medical certification for nursing facility admissions in order to align the requirements for continued stay requests with current Office of Aging and Adult Services policies and procedures to ensure that these provisions are promulgated in a clear and concise manner in the Louisiana Administrative Code. It is anticipated that implementation of this proposed rule will not have economic costs, but may be beneficial to nursing facilities in FY 18-19, FY 19-20 and FY 20-21 since these technical changes align the procedural requirements for submission of continued stay requests with current practices, and extend the age of the documentation the nursing facility can use to make the continued stay request.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This rule has no known effect on competition and employment.

Jen Steele  
Medicaid Director  
1809#043

Evan Brasseaux  
Staff Director  
Legislative Fiscal  
Office

## **NOTICE OF INTENT**

### **Department of Health Bureau of Health Services Financing**

Outpatient Hospital Services  
Non-Rural, Non-State Hospitals and Children's Specialty  
Hospitals  
Reimbursement Rate Increase  
(LAC 50:V.5313, 5317, 5513, 5517,  
5713, 5719, 5913, 5917, 6115 and 6119)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:V.5313, §5317, §5513, §5517, §5713, §5719, §5913, §5917, §6115 and §6119 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

House Concurrent Resolution (HCR) 6 of the 2018 Regular Session of the Louisiana Legislature required the Department of Health, Bureau of Health Services Financing to increase the reimbursement rates for outpatient hospital services paid to non-rural, non-state hospitals and children's specialty hospitals. In compliance with the requirements of HCR 6, the department proposes to amend the provisions governing the reimbursement methodology for outpatient



hospital services in order to increase the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals.

## **Title 50**

### **PUBLIC HEALTH-MEDICAL ASSISTANCE**

#### **Part V. Hospitals**

##### **Subpart 5. Outpatient Hospitals**

##### **Chapter 53. Outpatient Surgery**

##### **Subchapter B. Reimbursement Methodology**

##### **§5313. Non-Rural, Non-State Hospitals**

A. - J.1. ...

K. Effective for dates of service on or after January 1, 2019, the reimbursement rates paid to non-rural, non-state hospitals for outpatient surgery shall be increased by 11.56 percent of the rates on file as of December 31, 2018.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2041 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:964 (May 2017), LR 43:2534 (December 2017), LR 44:

##### **§5317. Children's Specialty Hospitals**

A. - H.1. ...

I. Effective for dates of service on or after January 1, 2019, the reimbursement rates paid to children's specialty hospitals for outpatient surgery shall be increased by 5.26 percent of the rates on file as of December 31, 2018.

1. Final reimbursement shall be 97 percent of allowable cost as calculated through the cost report settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2534 (December 2017), LR 44:

##### **Chapter 55. Clinic Services**

##### **Subchapter B. Reimbursement Methodology**

##### **§5513. Non-Rural, Non-State Hospitals**

A. - J.1. ...

K. Effective for dates of service on or after January 1, 2019, the reimbursement rates paid to non-rural, non-state hospitals for outpatient clinic services shall be increased by 11.56 percent of the rates on file as of December 31, 2018.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:

##### **§5517. Children's Specialty Hospitals**

A. - H. ...

I. Effective for dates of service on or after January 1, 2019, the reimbursement rates paid to children's specialty

hospitals for outpatient hospital clinic services shall be increased by 5.26 percent of the rates on file as of December 31, 2018.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2042 (September 2010), amended LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:

##### **Chapter 57. Laboratory Services**

##### **Subchapter B. Reimbursement Methodology**

##### **§5713. Non-Rural, Non-State Hospitals**

A. - J.1. ...

K. Effective for dates of service on or after January 1, 2019, the reimbursement rates paid to non-rural, non-state hospitals for outpatient laboratory services shall be increased by 11.56 percent of the rates on file as of December 31, 2018.

1. In accordance with Section 1903(i)(7) of the Social Security Act, payments for Medicaid clinical diagnostic laboratory services shall be limited to the amount that Medicare pays on a per test basis. If this or any other rate adjustment causes the Medicaid calculated rate to exceed the Medicare payment rate for a clinical laboratory test, the rate shall be adjusted to the lower Medicare payment rate.

2. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2042 (September 2010), LR 37:3266 (November 2011), LR 40:313 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:

##### **§5719. Children's Specialty Hospitals**

A. - H. ...

I. Effective for dates of service on or after January 1, 2019, the reimbursement rates paid to children's specialty hospitals for outpatient clinical diagnostic laboratory services shall be increased by 5.26 percent of the rates on file as of December 31, 2018.

1. In accordance with Section 1903(i)(7) of the Social Security Act, payments for Medicaid clinical diagnostic laboratory services shall be limited to the amount that Medicare pays on a per test basis. If this or any other rate adjustment causes the Medicaid calculated rate to exceed the Medicare payment rate for a clinical laboratory test, the rate shall be adjusted to the lower Medicare payment rate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2043 (September 2010), amended LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of

Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:

## **Chapter 59. Rehabilitation Services**

### **Subchapter B. Reimbursement Methodology**

#### **§5913. Non-Rural, Non-State Hospitals**

A. - D. ...

E. Effective for dates of service on or after January 1, 2019, the reimbursement rates paid to non-rural, non-state hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be increased by 11.56 percent of the rates on file as of December 31, 2018.

1. Hospitals participating in public-private partnerships as defined in §6701 shall be exempted from this rate increase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2043 (September 2010), LR 44:

#### **§5917. Children's Specialty Hospitals**

A. - B.1....

C. Effective for dates of service on or after January 1, 2019, the reimbursement rates paid to children's specialty hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be increased by 5.26 percent of the rates on file as of December 31, 2018.

1. Final reimbursement shall be 97 percent of allowable cost as calculated through the cost report settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2043 (September 2010), LR 44:

## **Chapter 61. Other Outpatient Hospital Services**

### **Subchapter B. Reimbursement Methodology**

#### **§6115. Non-Rural, Non-State Hospitals**

A. - J.1. ...

K. Effective for dates of service on or after January 1, 2019, the reimbursement rates paid to non-rural, non-state hospitals for outpatient hospital services, other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees, shall be increased by 11.56 percent of the rates in effect as of December 31, 2018.

1. Final reimbursement shall be 83.18 percent of allowable cost as calculated through the cost report settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 36:1250 (June 2010), LR 36:2043 (September 2010), LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:

#### **§6119. Children's Specialty Hospitals**

A. - H.1. ...

I. Effective for dates of service on or after January 1, 2019, the reimbursement fees paid to children's specialty hospitals for outpatient hospital services, other than rehabilitation services and outpatient hospital facility fees, shall be increased by 5.26 percent of the rates in effect as of December 31, 2018.

1. Final reimbursement shall be 97 percent of allowable cost as calculated through the cost report settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2044 (September 2010), amended LR 37:3267 (November 2011), LR 40:314 (February 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:965 (May 2017), LR 43:2535 (December 2017), LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a no impact on family functioning, stability and autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, but may reduce the total direct and indirect cost to the provider to provide the same level of service and may enhance the provider's ability to provide the same level of service since this proposed Rule increases the payments to providers for the same services they already render.

#### **Public Comments**

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

## Public Hearing

A public hearing on this proposed Rule is scheduled for Thursday, October 25, 2018 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

## FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

### RULE TITLE: Non-Rural, Non-State Hospitals and Children's Specialty Hospitals Reimbursement Rate Increase

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state programmatic cost (Hospital Stabilization Fund statutory dedication revenues) of approximately \$7,895,909 for FY 18-19, \$22,808,110 for FY 19-20 and \$22,808,110 for FY 20-21. It is anticipated that \$1,188 (\$594 SGF and \$594 FED) will be expended in FY 18-19 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.67 percent in FY 18-19 and 65.79 percent in FY 19-20 and FY 20-21 for the projected non-expansion population, and an FMAP rate of 93.5 percent in FY 18-19, 91.5 percent in FY 19-20 and 90.0 percent in FY 20-21 for the projected expansion population.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$14,452,617 for FY 18-19, \$43,862,775 for FY 19-20 and \$43,862,775 for FY 20-21 (assuming passage of future resolutions). It is anticipated that \$594 will be expended in FY 18-19 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.67 percent in FY 18-19 and 65.79 percent in FY 19-20 and FY 20-21 for the projected non-expansion population, and an FMAP rate of 93.5 percent in FY 18-19, 91.5 percent in FY 19-20 and 90.0 percent in FY 20-21 for the projected expansion population.

#### III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule, in compliance with House Concurrent Resolution (HCR) 6 of the 2018 Regular Session of the Louisiana Legislature, amends the reimbursement methodology for outpatient hospital services to increase the reimbursement rates paid to non-rural, non-state hospitals and children's specialty hospitals. Providers of outpatient hospital services will benefit from this proposed Rule since it increases payments for the services they already render. It is anticipated that implementation of this proposed rule will increase programmatic expenditures for outpatient hospital services by approximately \$22,347,338 for FY 18-19, \$66,670,885 for FY 19-20 and \$66,670,885 for FY 20-21.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, we anticipate that the implementation may have a positive effect on employment as it will increase payments made to non-rural, non-state hospitals for outpatient services. The increase in payments may enhance the financial standing of these providers and could possibly cause an increase in employment opportunities.

Jen Steele  
Medicaid Director  
1809#044

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Health Bureau of Health Services Financing

Rural Health Clinics  
Reimbursement Methodology  
Mammography Separate Payments  
(LAC 50:XI.16703)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XI.16703 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing currently provides reimbursement for services rendered by rural health clinics (RHCs) on a per visit basis under a prospective payment system (PPS) methodology. The department now proposes to amend the provisions governing the reimbursement methodology for RHCs in order to implement a payment methodology to allow reimbursement for mammography screening and diagnosis services outside of the PPS rate.

## Title 50

## PUBLIC HEALTH—MEDICAL ASSISTANCE

### Part XI. Clinic Services

#### Subpart 15. Rural Health Clinics

#### Chapter 167. Reimbursement Methodology §16703. Alternate Payment Methodology

A. - C. ...

D. Effective for dates of service on or after January 1, 2019, RHCs shall be reimbursed a separate payment outside of the prospective payment system (PPS) rate for the following services:

1. Reserved.
2. Mammogram Screening and Diagnosis

a. Reimbursement for mammogram screening and diagnostics shall be a flat fee on file based on Medicaid covered current procedural terminology (CPT) code(s), in addition to the PPS rate for the associated encounter/office visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2632 (September 2011), LR 40:83 (January 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

#### **Family Impact Statement**

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule may have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972, as it reduces the number of visits required for Medicaid recipients to receive a mammogram and diagnostic services in an RHC which aids in detecting cancer and related illnesses earlier.

#### **Poverty Impact Statement**

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule may have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it decreases the number of visits required to receive a mammogram and diagnostic services, which will reduce unexpected costs and financial burdens for families.

#### **Provider Impact Statement**

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

#### **Public Comments**

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

#### **Public Hearing**

A public hearing on this proposed Rule is scheduled for Thursday, October 25, 2018 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH  
Secretary

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Rural Health Clinics Reimbursement Methodology Mammography Separate Payments**

### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that implementation of this proposed rule will result in estimated state general fund net programmatic savings of approximately \$22,181 for FY 18-19, \$73,622 for FY 19-20 and \$78,301 for FY 20-21 as a result of a direct correlation in increased access to mammograms which is expected to reduce Medicaid costs for physician services, and a reduction in rural health clinic (RHC) expenditures since fewer visits will be required to receive this service. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 18-19 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.67 percent in FY 18-19 and 65.79 percent in FYs 19-20 and 20-21 for the projected non-expansion population, and an FMAP rate of 93.5 percent in FY 18-19, 91.5 percent in FY 19-20 and 90.0 in FY 20-21 percent for the projected expansion population.

### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed Rule will reduce federal revenue collections by approximately \$110,903 for FY 18-19, \$334,258 for FY 19-20 and \$333,463 for FY 20-21. It is anticipated that \$216 will be collected in FY 18-19 for the federal share of the expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 64.67 percent in FY 18-19 and 65.79 percent in FYs 19-20 and 20-21 for the projected non-expansion population, and an FMAP rate of 93.5 percent in FY 18-19, 91.5 percent in FY 19-20 and 90.0 in FY 20-21 percent for the projected expansion population.

### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

This proposed Rule amends the provisions governing the reimbursement methodology for RHCs in order to implement a payment methodology to allow reimbursement for mammogram screenings and diagnostic services outside of the prospective payment system (PPS) rate. This proposed rule will be beneficial to Medicaid recipients as it reduces the number of RHC visits required to receive mammogram screening and diagnostic services, as well as early detection of breast cancer. There are no anticipated economic costs to RHCs; although, there may be a reduction in the number of RHC visits required to receive a mammogram which could reduce payments to RHCs.

However, we anticipate the rule will be beneficial to RHCs by allowing them to receive reimbursement for mammograms, in addition to the current PPS encounter rate. Although this rule increases payments for mammograms, we anticipate it will result in a net reduction in Medicaid programmatic expenditures by approximately \$133,516 for FY 18-19, \$407,880 for FY 19-20 and \$411,764 for FY 20-21 as a result of reduced payments for encounter visits associated with mammograms and offsetting savings in costs associated with breast cancer avoidance due to early detection and treatment, and a reduction in the number of encounters/office visits.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele  
Medicaid Director  
1809#045

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### NOTICE OF INTENT

#### Department of Health Physical Therapy Board

##### Licensing and Certification (LAC 46:LIV.Chapters 1-5)

The Louisiana Physical Therapy board, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:2405, hereby amends *Professional and Occupational Standards*, Physical Therapy Board, LAC 46:LIV 103, 105, 107, 111, 113, 119, 121, 123, 125, 129, 133, 135, 137, 139, 143, 145, 151, 157, 161, 163, 165, 167, 171, 172, 173, 175, 180, 181, 183, 185, 187, 195, 198, 303, 305, 307, 311, 313, 318, 321, 325, 330, 331, 333, 335, 337, 339, 341, 343, 345, 351, 357, 359, 365, 367, 369, 371, 373, 375 377, 379, 381, 383, 387, 392, and 501.

The amendments to LAC 46:LIV are mostly a clean-up effort to cite statutes and eliminate redundancy in language. The amendments to LAC 46:LIV.135-139 streamline the process for licensing foreign-trained physical therapists (PTs) and creates a process for licensing foreign-trained physical therapy assistants (PTAs) and military trained physical therapist assistants (PTAs). Section 151 was amended to eliminate the requirement for a face-to-face interview prior to obtaining a license and to require all initial applicants complete the state jurisprudence exam. Section 171 was amended to remove the mandate of remediation requirements for those who fail the examination by changing wording from “shall” to “may” regarding remediation recommendations for passing the national board exam. The board also set a limit for low score failed attempts to align with the national board examination limitations. Section 180 has been added to create a new license status of “inactive,” allowing those not practicing physical therapy in the state of Louisiana to continue to renew their license but waive the continuing education requirements. Section 311 was amended to remove the requirement of 2-years’ experience working as a licensed physical therapist prior to undertaking 50 hours of dry needling education and to change the process for documenting informed consent of patients. Section 318 adopts R.S. 40:1223.1 et seq., and corresponding amendments to govern telehealth in practice for physical therapy. Section 325 has been amended to provide exemptions to licensure to professionals in good standing from other jurisdictions in the United States or foreign trained. Section 333.B.2.a provides clarification for supervision of physical therapist assistants regarding initial evaluation of patients and delegation or subsequent treatment. Section 341 updates language regarding documentation standards for physical therapists and physical therapist assistants. Section 345 proposes structural changes, moving language as it exists from §373, Violations, to §345, Unprofessional Conduct, to help licensees navigate the rules better, while also adding the requirement of

professionals to notify the board of felony convictions. If not noted here, the rules have no substantial change and have been changed mostly to cite existing law.

These amendments are proposed in response to the decision made by the majority of members at the board meetings held January 24, 2018 and March 21, 2018. The basis and rationale for the proposed Rule are to comply with R.S. 37:2405.

### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LIV. Physical Therapy Examiners

##### Subpart 1. Licensing and Certification

#### Chapter 1. Physical Therapists and Physical Therapists Assistants

##### Subchapter A. Board Organization

#### §103. Board Domicile

A. Domicile. The board shall be domiciled in accordance with R.S. 37:2403(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2403(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, the Physical Therapy Board, LR 37:3031 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

#### §105. Meetings

##### [Formerly §179]

A. Meetings. Meetings of the board shall be held at least six times a year to transact business. The board shall comply with R.S. 37:2404(A) when scheduling regular meetings, calling special meetings, and providing notice and waivers.

B. Location. Unless otherwise noticed, board meetings shall be held at the board office. The board may meet at other locations as determined by the board with notice of such location posted at least five days prior to the meeting date. The location of the meeting shall not be changed after such notice is given without reasonable notice of such change provided to all board members and to others who have requested such notification.

C. Quorum. The number of board members that constitute a quorum for any business before the board will be the number set in R.S. 37:2404(B). A majority vote of those present in a meeting is required for passage of a motion before the board.

D. Open Meetings. All board meetings and hearings shall be open to the public. The board may, in its discretion and according to R.S. 42:16-17, conduct any portion of its meeting in executive session, closed to the public and may request the participation in such executive session of staff members or others as may be needed for consideration of the business to be discussed in executive session.

E. Attendance. Board members are expected to attend regularly scheduled meetings, special meetings, open forums and hearings, which may be scheduled in conjunction or separate from regular scheduled meetings. Attendance constitutes active participation in at least 80 percent of the entire meeting. Missing two meetings per year is generally acceptable. Exceptions may be granted by the board for good cause. Notification of an expected absence shall be submitted to the board office as early as possible prior to the commencement of the meeting.

F. Rules of Order. The most current edition of *Robert's Rules of Order* shall govern all proceedings of the board unless otherwise provided by board rules or policy.

G. Public Comments. A public comment period shall be held during each board meeting and in accordance with R.S. 42:19(D). Persons desiring to present comments shall notify the executive director of the board prior to the beginning of the meeting. However, to assure that an opportunity is afforded to all persons who desire to make comments, the chairman shall inquire at the beginning of the meeting if there are additional persons present who wish to comment. The chairman shall allot the time available for the public comments in an equitable manner among those persons desiring to comment. Each person making public comments shall identify himself and the group, organization, company, or entity he represents, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2404(A), R.S. 37:2404(B), and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 26:1446 (July 2000), amended by the Physical Therapy Board, LR 37:3031 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§107. Officers**

A. - D. ...

E. Term. Officers of the board shall be elected in accordance with the schedule set forth in R.S. 37:2404(A) and shall serve a one-year term or until the election of their successors. An officer elected to a position vacated before the end of its term shall serve only for the remainder of that term.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2404(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§111. Compensation**

A. Per Diem and Expenses. Per diem and expenses shall be provided in accordance to and as authorized by R.S. 37:2404(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2404(C) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§113. Finances**

A. ...

B. Administrative Costs. Board orders in disciplinary proceeding may require the respondent to reimburse the board as authorized by R.S. 37:2405(B)11.

C. - D.5. ...

E. Travel Expenses. Board members, committee members and employees shall be entitled to reimbursement in accordance with R.S. 2404(C). The board shall adopt policies to provide guidance to the executive director in determining "reasonable" expenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2404(C), R.S. 37:2424(A), and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§119. Affiliations**

A. Professional Organizations and Associations. The board may join and pay dues to such professional organizations and associations organized to promote the improvement of standards of practice in physical therapy or

to advance and facilitate the operation of the board as an entity. In participating in such organizations or associations, the board may accept reimbursement of conference fees and travel expenses as are available generally to organizational members of those organizations or associations. Any participant who accepts complimentary admission, lodging, or transportation to and from an educational or professional development seminar or conference shall file an affidavit with the Board of Ethics in accordance with R.S. 42:1123(41).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3032 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

## **§121. Declaratory Statements**

### **[Formerly §351]**

A. Issuing of Statements. The board may issue a declaratory statement on its own initiative or in response to a request for clarification of the effect of the provisions contained in the Practice Act, R.S. 37:2401 et seq., and/or the board's rules, LAC 46:LIV.Chapter 1 et seq.

1. - 2. ...

3. The declaratory statement of the board in response to the petition shall be in writing and shall be made available on the board website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:392 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3033 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

## **Subchapter B. General Provisions**

### **§123. Definitions**

#### **[Formerly §§103, 113, 119, 303, and 305]**

Editor's Note: This Section was amended utilizing information from the Sections enumerated. The Historical Note reflects prior action for those enumerated Sections. A comprehensive revision of the Louisiana Physical Therapy Board book (LAC 46:LIV) was effective via the board's October 2011 Rule in the *Louisiana Register*.

A. As used in this Title, the following terms and phrases, unless specifically defined within the Physical Therapy Practice Act, R.S. 37:2401 et seq., shall have the meanings specified herein.

\* \* \*

*Applicant Review Committee*—the panel designated by board policy to review a license application and attached materials and evidence, including, but not limited to, a criminal history record, and to conduct interviews to examine whether an applicant has presented evidence satisfactory of his qualifications for licensure as required under the Practice Act and board rules and to recommend indicated action on an application. The applicant review committee acts on behalf of the board and shall be composed of one or more board members and the executive director, but may also include one or more advisory committee member(s) and legal counsel.

\* \* \*

*Board*—the Louisiana Physical Therapy Board (formerly the Louisiana State Board of Physical Therapy Examiners) created by R.S. 37:2403 within the Louisiana Department of Health, acting through its members as a body or through its

executive director, staff, and agents carrying out the rules, policies and precedents established by the board.

\* \* \*

*Child or Children*—as used in R.S. 37:2418(C)(1), an individual or individuals under the age of 21 years.

*Client*—a person seeking or receiving information, advice, education and/or recommendations for activities related to wellness and preventive services including conditioning, injury prevention, reduction of stress, or promotion of fitness.

\* \* \*

*Clinical Supervisor*—a licensed PT or PTA in good standing and selected with approval of the board who directly supervises a CAPTE graduate pending examination holding a provisional license in the clinical environment. A clinical supervisor may directly supervise a foreign-educated physical therapist or foreign-educated physical therapist assistant while completing the period of supervised clinical practice requirements of §331. However, to supervise a foreign-educated PT or PTA, the clinical supervisor must be a licensed PT in good standing and selected with approval of the board with at least three years of clinical experience.

*Competence*—the application of knowledge, skills, and professionalism required to function effectively, safely, ethically and legally within the context of the patient/client role and environment.

\* \* \*

*Consent Order*—an order of the board that has been contractually entered into by the board and respondent, which shall include, in part, a factual basis for the consent order, the violations of law and rule related to the licensee's conduct, and stipulations which may include revocation, suspension, other restrictions, or any combination thereof as mutually agreed between the parties.

*Consultative Services*—information, advice, education and/or recommendations provided by a physical therapist with respect to physical therapy.

\* \* \*

*Continuing Education Year*—beginning April 1 and ending March 31 of the following year.

*Continuous Supervision*—observation and supervision of the procedures, functions, and practice rendered by a CAPTE graduate PTA provisional licensee pending examination, PT or PTA student, or PT technician, by a supervising PT of record who is physically within the same treatment area.

*Coursework Tool (CWT)*—a tool developed by the FSBPT as a standardized method to evaluate the educational equivalence of non-CAPTE graduates to CAPTE graduates. Each CWT reflects the general and professional educational requirements for substantial equivalence at the time of graduation with respect to a U.S. first professional degree in physical therapy.

\* \* \*

*CWT*—see *coursework tool*.

\* \* \*

*Discharge Summary*—see Documentation Standards, §341.

\* \* \*

*FEPT*—see §135.A.1.

*FEPTA*—see §135.A.2.

*Foreign-Educated Physical Therapist (FEPT)*—see §135.A.1.

*Foreign-Educated Physical Therapist Assistant (FEPTA)*—see §135.A.2.

\* \* \*

*Impairment or Impaired*—a condition that causes an infringement on the ability of an individual to practice, or assist in the practice, of physical therapy with reasonable skill and safety to patients. Impairment may be caused by, but is not limited to, alcoholism, substance abuse, addiction, mental and/or physical conditions.

*In Good Standing*—a person who holds a current, valid Louisiana license, who is not subject to a board order or consent order, and whose license is not restricted. The board is the ultimate arbiter of whether a licensee is in good standing.

*Inactive*—a license status indicating voluntary termination of the right or privilege to practice physical therapy in Louisiana. The board may allow a licensee who is not engaged in the practice of physical therapy in Louisiana to inactivate the license as an alternative to an expired license.

*Incompetence*—lacking competence, as defined in §123.

\* \* \*

*Initial Physical Therapy Evaluation*—as defined in R.S. 37:2407(A)(1).

\* \* \*

*Jurisdiction of the United States*—any state, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any American territory.

\* \* \*

*Letter of Concern*—is non-disciplinary and notifies the licensee that while evidence found does not merit formal disciplinary action, the board believes that the licensee should become educated about the requirements of the Practice Act and board rules. A letter of concern shall be placed in the permanent record of a licensee following the conclusion of a complaint or upon the granting or renewal of a license. A letter of concern shall not be reportable to NPDB, shall not be published with board disciplinary actions, and shall be deemed confidential pursuant to R.S. 37:2406(B). A letter of concern may be utilized as evidence in subsequent disciplinary actions.

*License*—the lawful authority of a PT or PTA to engage in the practice of physical therapy in the state of Louisiana, as evidenced by a license duly issued by and under the official seal of the board.

\* \* \*

*MEPTA*—see §135.A.3.

*Military-Educated PTA Applicant (MEPTA)*—see §135.A.3.

\* \* \*

*NPDB*—see *national practitioner databank*.

*NPTE*—see *national physical therapy examination*.

*National Physical Therapy Examination*—a national examination administered by the FSBPT and approved by the board for the licensure of a physical therapist or the licensure of a physical therapist assistant.

*National Practitioner Databank (NPDB)*—(formerly the “healthcare integrity and protection data bank” or “HIPDB”) a web-based repository of reports containing information on medical malpractice payments and certain adverse actions

related to health care practitioners, providers, and suppliers, preventing practitioners from moving state-to-state without disclosure or discovery of previous damaging performance and promoting quality health care and deterring fraud and abuse within health care delivery systems created by the Health Care Quality Improvement Act of 1986 (HCQIA), as amended, title IV of Public Law 99-660 (42 U.S.C. 11101 et seq.). Section 1921 of the Social Security Act, as amended, (42 U.S.C. 1396r-2) mandates reporting to the NPDB of adverse licensure actions taken against licensees.

\* \* \*

*On Premises*—the supervising PT of record is physically present in the treating facility and immediately available to the treatment area.

\* \* \*

*Patient*—an individual receiving physical therapy services pursuant to a plan of care, treatment plan or program.

*Patient Care Conference*—see Documentation Standards, §341.

*Per Diem*—compensation to a board member or committee member for each day during which he is participating in or carrying out an official board approved activity pursuant to R.S. 37:2404(C).

\* \* \*

*Physical Therapist*—as defined in R.S. 37:2407(A)(2), and is licensed by the board pursuant to the Practice Act and rules.

*Physical Therapist Assistant*—as defined in R.S. 37:2407(A)(3), and is licensed by the board pursuant to the Practice Act and rules.

*Physical Therapy*—as defined in R.S. 37:2407(A)(4).

*Physical Therapy Evaluation*—as defined in R.S. 37:2407(A)(1).

*Physical Therapy Technician*—a worker not licensed by the board who operates under the direction and control of a licensed physical therapist and functions in a physical therapy clinic, department or business and assists with preparation of the patients for treatment and with limited patient care.

\* \* \*

*Plan of Care*—documentation created and signed by the physical therapist specifying the measurable goals, specific treatments to be used and the proposed duration and frequency of specified treatment. It is an integral component of a PT evaluation and must be created by the physical therapist prior to delegating appropriate treatment to a PTA or PT technician and incorporating documentation standards provided for in §341.

*Practice of Physical Therapy*—as defined in R.S. 37:2407(A)(5).

\* \* \*

*Preventive Services*—the use of physical therapy knowledge and skills by a PT or PTA to provide education or activities in a wellness setting for the purpose of injury prevention, reduction of stress and/or the promotion of fitness and for conditioning. This does not include the administrations of physical therapy treatment.

*Probation*—license status in which the licensee may practice physical therapy in Louisiana, but may be required to work under certain conditions and/or restrictions as specified and made public in a board order or board agreement.

*Progress Note*—see Documentation Standards, §341.

*Provisional License*—a temporary license issued to practice physical therapy in Louisiana. Three types of provisional licenses issued include:

a. *CAPTE graduate pending examination*—applicant pending results of a fixed-date examination;

b. *foreign-educated provisional license*—physical therapist or physical therapist assistant applicant pending completion of the supervised clinical practice requirement of §137;

c. *temporary reciprocal provisional license*—applicant licensed elsewhere and working temporarily in Louisiana under the provisions of §147.

*PT*—see *physical therapist*.

*PTA*—see *physical therapist assistant*.

*Reassessment or Reevaluation*—see Documentation Standards, §341.

\* \* \*

*Respondent*—a licensee who is the subject of an informal complaint, as addressed in §381, or a formal administrative complaint, as addressed in §387, alleging violation of the Practice Act or board rules.

*Restricted*—license status indicating that the board has placed restrictions or conditions on a license including, but not limited to, scope of practice, place of practice, supervision of practice, or patient demographic.

\* \* \*

*Revoked*—license status indicating annulment of a license by an action of the board pursuant to formal disciplinary action which terminates the right to practice physical therapy in Louisiana.

\* \* \*

*State*—see *jurisdiction of the United States*.

\* \* \*

*Subversion*—engaging in any activity contrary to honesty, justice, or good morals in an attempt to undermine the integrity of the examination or to receive a passing score on the examination as defined in R.S. 37:2414 and required by R.S. 37:2409-2411.2. For purposes of this Chapter, subversion also includes any unauthorized use or reproduction of copyrighted materials.

\* \* \*

*Treatment Record*—see Documentation Standards, §341.

*Week*—any consecutive seven days.

\* \* \*

*Written Record of Physical Therapy*—documentation including the prescription or referral (if such exists), the initial evaluation, treatment notes, notes of patient care conferences, progress notes, reevaluations or reassessments, referral to an appropriate healthcare provider pursuant to R.S. 37:2418(B)(2)(b) (if such exists), and patient status at discharge documenting the complete course of patient care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2407(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744, 745, 748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662, 666 (July 1991), LR 19:208 (February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 24:39, 40 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1908 (September 2008), amended by the Physical



Therapy Board, LR 37:3033 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§125. Additional Definitions**  
**[Formerly §306]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 31:441 (February 2005), amended by the Physical Therapy Board, LR 37:3036 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

**Subchapter C. Graduates of Approved Schools of Physical Therapy or Physical Therapist Assisting**

**§129. Qualifications for License, Provisional License**  
**[Formerly §107]**

A. To be eligible for a license as a PT, an applicant shall meet the requirements of R.S. 37:2409, as well as the following requirement:

1. furnish the board with his Social Security number.

B. To be eligible for a license as a PTA, an applicant shall meet the requirements of R.S. 37:2411, as well as the following requirements:

1. be a citizen of a jurisdiction of the United States or an alien lawfully admitted for permanent residence, or an alien otherwise authorized to work lawfully in the United States; and

2. furnish the board with his Social Security number.

C. ...

D. To be eligible for a provisional license as a PT or PTA, a CAPTE graduate applicant shall possess all of the qualifications for license in this Section except R.S. 37:2409(5) and R.S. 37:2411(4), respectively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2409, R.S. 37:2411 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:662 (July 1991), LR 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998), LR 26:1443 (July 2000), amended by the Physical Therapy Board, LR 37:3036 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§133. Approved Schools of Physical Therapy or Physical Therapist Assisting**  
**[Formerly §111]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2411 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3037 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

**Subchapter D. Foreign-Educated Graduates**

**§135. Scope of Subchapter**  
**[Formerly §115]**

A. Applicants. In accordance with R.S. 37:2410(6), the rules of this Subchapter specify additional qualifications,

requirements and procedures for the licensing of the following individuals:

1. *foreign-educated physical therapist (FEPT)*—a person whose education in physical therapy was obtained outside of a jurisdiction of the United States in a program not accredited by CAPTE;

2. *foreign-educated physical therapist assistant (FEPTA)*—a person whose education in physical therapy was obtained outside of a jurisdiction of the United States in a program not accredited by CAPTE;

3. *military-trained physical therapist assistant (MTPTA)*—a person whose education in physical therapy was obtained in a military program not accredited by CAPTE.

B. Foreign-educated applicants seeking initial licensure in the United States in Louisiana must obtain a provisional license and complete a period of supervised clinical practice prior to obtaining a permanent license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 18:962 (September 1992), LR 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998), LR 26:1444 (July 2000), LR 28:1979 (September 2002), amended by the Physical Therapy Board, LR 37:3037 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§137. Qualification for License, Provisional License for Foreign Graduates**  
**[Formerly §115]**

A. The burden of satisfying the board's requirements and qualifications for licensure as a foreign-educated physical therapist (FEPT) in accordance with R.S. 37:2410, a foreign-educated physical therapist assistant (FEPTA) in accordance with R.S. 37:2411.1, and a military-trained physical therapist assistant (MTPTA) in accordance with R.S. 37:2411.2 is upon the applicant. An applicant shall not be deemed to possess required qualifications unless the applicant demonstrates and evidences such qualifications in the manner satisfactory to the board.

B. Credentials Evaluation. A FEPT, FEPTA and MTPTA applicant must submit to the board a credentials evaluation prepared no more than 18 months prior to the date of the application for licensure. The credentials evaluation report shall be submitted to the board directly by the credential evaluation agency evaluating the professional education and training. The approved credentials evaluation shall determine substantial equivalence of the applicant's education. Such education shall include no less than 150 total semester-hour credits including no less than 90 semester-hours credits of physical therapy education and no less than 60 semester-hour credits of general education. The applicant is responsible for any expense associated with the credentials evaluation.

1. The credentials evaluation must provide documentation that the applicant's education from outside a state or territory of the U.S. is substantially equivalent to the education of a PT who has graduated from a physical therapy education program accredited by CAPTE. The evaluation must also establish that the institution at which the applicant received his physical therapy education is recognized by the ministry of education or an equivalent agency in that country.

2. To determine substantial equivalency, the credentialing evaluation entity shall use a course work tool (CWT) adopted by the FSBPT and approved by the board.

3. To determine substantial equivalency for individuals seeking initial licensure, the credentialing agency shall use the current CWT.

4. To be considered substantially equivalent to the requirements established in this rule, the applicant's foreign education must contain evidence of the content and distribution of coursework identified in the appropriate CWT identified in Paragraph B.3 of this Section.

5. An evaluation prepared by a credentialing agency reflects only the findings and conclusion of that agency, and shall not bind the board. If the board determines that the applicant's education is not substantially equivalent to an entry-level physical therapy program accredited by CAPTE, the board will notify the applicant in writing, identifying the deficiencies.

C. Exam Score. The applicant must achieve a passing score on the national physical therapy examination (NPTE).

D. Authorization to Work in the U.S. The applicant must be a citizen of a jurisdiction of the United States or an alien lawfully admitted for permanent residence, or an alien otherwise authorized to work lawfully in the United States.

E. The board will issue a provisional license to a FEPT or FEPTA only after the applicant is physically present in the U.S. and has met all requirements for licensure except the completion of a supervised clinical practice as required by R.S. 37:2410(5) and R.S. 37:2411.1(5).

F. If a document required by this Title is in a language other than English, the applicant shall arrange for its translation into English by a translation service acceptable to the board and shall submit a translation signed by the translator attesting to its accuracy.

G. Designated Representative Letter

1. An applicant may designate a person as a representative by providing a written authorization to the board which includes the name, telephone number, and address of the person stating that the person will be the designated representative for the applicant.

2. This authorization must be notarized by a notary of the country in which the applicant resides and sent directly to the board. A copy of the notarized authorization shall be sent to the designated representative by the applicant.

3. A designated representative may obtain confidential information regarding the application.

4. The authorization to represent an applicant will be valid until the applicant receives his provisional license or the board is notified in writing by the applicant that the designated representative has been terminated or replaced. An applicant may have only one designated representative at any time.

5. The designated representative is not required by the board to have power of attorney for the applicant. A designated representative or power of attorney for an applicant may not sign for the applicant any document requiring the notarized signature of the applicant. Documents submitted by a designated representative or power of attorney for the applicant must be submitted in accordance with the requirements set by the Practice Act and rules. Any falsification of, or misrepresentation in, documents required for licensing submitted by a designated representative or a

person with power of attorney for the applicant may result in denial of license or other penalties to the applicant.

H. Supervised Clinical Practice. To be eligible for an FEPT and FEPTA provisional license to engage in supervised clinical practice as required in §331, a FEPT or FEPTA applicant shall meet all of the substantive qualifications for license as specified by R.S. 37:2010 or R.S. 37:2411.1 respectively. The FEPT or FEPTA applicant and the board-approved supervisor for the period of supervised clinical practice shall participate in a personal meeting with a member of the board, or a designee of the board, by appointment prior to being issued a provisional license to engage in supervised clinical practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 18:962 (September 1992), LR 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998), LR 26:1444 (July 2000), LR 28:1979 (September 2002), amended by the Physical Therapy Board, LR 37:3037 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§139. Licensing Procedures for Foreign-Educated Graduates**

A. Licensing procedures for FEPT and FEPTA applicants are as follows:

1. application for initial licensure by examination as a FEPT or FEPTA shall:

a. complete the license application process as set forth in §137;

b. satisfy the procedures and requirements for application provided by §§149-153 of this Chapter;

c. satisfy the procedures and requirements for examination administered by the board provided in §§155-171; and

d. have successfully completed at least six months of approved supervised clinical practice as required in §331.

2. licensure by reciprocity for FEPT and FEPTA applicants shall be in accordance with §145.

a. the period of supervised clinical practice may be waived for individuals who have engaged in physical therapy practice for 20 hours or more per week for at least 12 months immediately preceding application in a Jurisdiction of the United States.

B. Licensing procedures for military trained physical therapist assistants (MTPTA) are as follows:

1. application for initial licensure by examination as a MTPTA shall:

a. complete the substantive qualification as specified in §137;

b. satisfy the procedures and requirements for application provided by §§149-153 of this Chapter; and

c. satisfy the procedures and requirements for examination administered by the board provided in §§155-171.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3038 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§143. Procedural Requirements for FEPT, FEPTA, and MTPTA Applicants [Formerly §117]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:662 (July 1991), LR 18:962 (September 1992), LR 19:208 (February 1993), LR 22:284 (April 1996), LR 24:39 (January 1998), LR 26:1444 (July 2000), LR 28:1979 (September 2002), amended by the Physical Therapy Board, LR 37:3039 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

**Subchapter E. Licensure by Reciprocity**

**§145. Qualifications for Licensure by Reciprocity [Formerly §121]**

A. ...

B. Graduates of Approved Schools of Physical Therapy or Physical Therapist Assisting

1. An applicant who possesses and meets all of the qualifications and requirements specified by R.S. 37:2409 and R.S. 37:2411, as interpreted by §§129-139 of this Chapter, but who has taken the board approved licensing exam in another jurisdiction, shall nonetheless be eligible for licensure by reciprocity in accordance with R.S. 37:2412 if the following requirements are satisfied:

a. the applicant possesses, as of the time the application is filed and at the time the board passes upon such application, a current, unrestricted license in good standing or its equivalent issued by another jurisdiction;

b. the applicant has not been disciplined in any jurisdiction for an act which would have constituted grounds for refusal, suspension, or revocation of a license to practice physical therapy in this state at the time the act was committed;

c. the jurisdiction from whence the applicant comes accords a similar licensing privilege to individuals licensed as PTs and PTAs in Louisiana; and

d. the requirements for licensure in the other jurisdiction were, at the date of licensing therein, substantially equal to the requirements for licensure in Louisiana, specifically §129, as set forth now or at the time of licensure in the other jurisdiction.

C. Foreign-Educated Physical Therapist (FEPT) or Foreign-Educated Physical Therapist Assistant (FEPTA)

1. An FEPT or FEPTA is eligible for licensure by reciprocity as a PT or PTA in accordance with R.S. 37:2412 if the following requirements are satisfied:

a. the applicant possesses, as of the time the application is filed and at the time the board passes upon such application, a current, unrestricted license in good standing or its equivalent issued by another jurisdiction;

b. the applicant has not been disciplined in any jurisdiction for an act which would have constituted grounds for refusal, suspension, or revocation of a license to practice physical therapy in this state at the time the act was committed;

c. the jurisdiction from whence the applicant comes accords a similar licensing privilege to individuals licensed as PTs and PTAs in Louisiana; and

d. the requirements for licensure in the other jurisdiction were, at the date of licensing therein, substantially equal to the requirements for licensure of foreign-educated PT and PTAs in Louisiana, specifically §137, as set forth now or at the time of licensure in the other jurisdiction.

2. An FEPT or FEPTA who meets the requirements of §145.C.1 and who has engaged in the practice of physical therapy for a minimum of 20 hours per week for at least for at least one year in another jurisdiction, may be eligible for licensure by reciprocity as a PT or PTA without completing the period of supervised clinical practice as set forth in §137.C, at the discretion of the board. Such request shall be made in writing and submitted with license application and acceptable documentation of clinical experience.

3. In accordance with R.S. 37:2410(6) and R.S. 37:2411.1(6), the board may, in its discretion, mandate completion of a board approved self-assessment tool, various education activities, or supervised practice prior to issuance of a license by reciprocity to a foreign-educated PT or PTA.

D. To be eligible for licensure under Subsections B and C of this Section, applicants shall have met the continuing education requirements contained in the Practice Act and/or board rules for the 24 months preceding their application for the jurisdiction where they are currently licensed and practicing physical therapy.

E. An applicant for reciprocity who has a current, unrestricted license in good standing or its equivalent issued by another jurisdiction, but has not engaged in the practice of physical therapy in any jurisdiction or country for a period of four or more years shall be subject to these additional requirements:

1. licensee shall be subject to a three-month period of supervised clinical practice;

2. licensee may only practice under the on premises supervision of a board-approved PT who has practiced no less than three years with a Louisiana license in good standing;

3. completion of the practice assessment and satisfactory completion of continuing education courses indicated by that tool to bring the applicant's knowledge to current standards;

4. a supervision agreement must be approved by the executive director before a provisional license will be issued. The supervision agreement shall be in force for the entire three-month supervisory period. This licensee may only practice in those facilities and under the supervision of the PT named in the approved supervision agreement. Any change in practice site or supervisor must be submitted in a revised supervision agreement prior to the change taking place. At the end of the supervisory period, the supervising PT of record shall report to the board the satisfactory or unsatisfactory completion of the supervision period. If an unsatisfactory supervision period is reported by the supervising PT of record, the board, in its discretion, may require an additional three-month supervisory period; and

5. completion of remedial courses which may be prescribed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2412 and (4) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR

19:208 (February 1993), LR 34:1906 (September 2008), amended by the Physical Therapy Board, LR 37:3039 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

## **Subchapter F. License Application**

### **§151. Requirements**

#### **[Formerly §125]**

A. - B.3. ...

4. such other information and documentation as the board may require to evidence qualification for licensure and completion of the requirements for licensure;

5. the application fees due from an applicant shall follow the fee schedule described in §501; and

6. completion of the Louisiana jurisprudence examination.

C. An applicant for whom supervised clinical practice is required must forward to the board a supervisory request form for approval, including the name of the PT or PTA who is requested to supervise his clinical practice. The supervisor must consent to the supervision and be approved by the board prior to issuance of a provisional license.

D. An applicant must pass of the Louisiana jurisprudence exam.

E. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2413 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:745 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 19:208 (February 1993), LR 26:1444 (July 2000), amended by the Physical Therapy Board, LR 37:3040 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 42:1299 (August 2016), LR 44:

## **Subchapter G. Examination**

### **§157. Eligibility for Examination**

#### **[Formerly §133]**

A. To be eligible for examination by the board, an applicant shall possess all qualifications for licensure prescribed by §129. However, an applicant who has completed, or will complete prior to examination, his physical therapy or physical therapist assistant education, but who does not yet possess a degree or certificate, shall be deemed eligible for examination upon submission to the board of a letter subscribed by the authorized representative of an approved school certifying that the applicant has completed all academic education at such school or college, that a degree in physical therapy or physical therapist assisting will be conferred at the next scheduled convocation of such school, and specifying the date on which such degree will be awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3042 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§161. Administration of Examination**

#### **[Formerly §137]**

A. - B. ...

C. An applicant scheduled for examination shall:

1. ...

2. fully and promptly comply with any and all rules, policies, procedures, instructions, directions, or requests made or prescribed by the testing service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387 (May 1989), LR 17:663 (July 1991), LR 26:1445 (July 2000), amended by the Physical Therapy Board, LR 37:3042 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§163. Subversion of Examination Process**

#### **[Formerly §139]**

A. An applicant who engages or attempts to engage in conduct which subverts or undermines the integrity of the examination process shall be subject to the sanctions specified in §167.

B. Conduct which subverts or undermines the integrity of the examination process includes, but is not limited to:

1. refusing or failing to fully and promptly comply with any rules, policies, procedures, instructions, directions, or requests made or prescribed by representatives of the testing service;

2. ...

3. reproducing or reconstructing any portion of the licensing examination by copying, duplication, written notes or electronic recording;

4. selling, distributing, buying, receiving, obtaining, or having unauthorized possession of any portion of current, future, or previously administered licensing examination;

5. any unauthorized use or reproduction of copyrighted materials;

6. communicating in any manner with any other examinee or any other person during the administration of the examination;

7. copying answers from another examinee or permitting one's answers to be copied by another examinee during the administration of the examination;

8. having in one's possession during the administration of the examination any materials or objects other than the examination materials distributed, including, without limitation, any books, notes, recording devices, or other written, printed or recorded materials or data of any kind;

9. impersonating an examinee by appearing for an applicant and taking the examination for, and in the name of an applicant other than himself;

10. permitting another person to appear for and take the examination on one's behalf and in one's name; or

11. engaging in any conduct which disrupts the examination process for other examinees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 26:1445 (July 2000), amended by the Physical Therapy Board, LR 37:3042 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§165. Finding of Subversion**  
**[Formerly §141]**

A. When, during the administration of examination, there exists reasonable cause to believe that an applicant is engaging, or attempting to engage, in subversion of the exam process, appropriate action shall be taken by the testing service to promptly terminate such conduct and ensure the integrity of the examination. In the event that the testing entity takes action against an applicant, such testing entity shall report such conduct to the board in a timely manner.

B. When the board has reasonable cause to believe that an applicant has engaged in or attempted to engage in conduct which subverts the examination process, either prior to or during the administration of the examination, the board shall notify the applicant and provide him with an opportunity for a hearing pursuant to the Administrative Procedure Act and applicable board rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:746 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:663 (July 1991), LR 26:1445 (July 2000), amended by the Physical Therapy Board, LR 37:3042 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§167. Sanctions for Subversion of Examination**  
**[Formerly §143]**

A. An applicant who is found by the board to have engaged in or attempted to engage in conduct which subverts or undermines the integrity of the examination process shall be deemed to have failed the examination. Such failure shall be recorded in the official records of the board.

B. In addition to the sanctions permitted or mandated by §167.A as to an applicant found by the board to have engaged in or attempted to engage in conduct which subverts the examination process, either prior to or during the administration of the examination, the board may:

1. revoke, suspend, or impose probationary conditions on any license which has been issued to such applicant;

2. disqualify the applicant, permanently or for a specific period of time from eligibility for licensure in the state of Louisiana; or

3. disqualify the applicant, permanently from eligibility for examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2414 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3043 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§171. Restriction, Limitation on Examinations, Additional Requirements**  
**[Formerly §§147, 153, and 155]**

A. ...

B. An applicant, who has failed the examination for the first time, shall have no more than two years from the date of the first examination and no more than four attempts to successfully pass the examination.

1. Upon approval by the board of a written request made in compliance with Paragraph 2 of this Subsection, the board may extend the time-period for the following applicants to successfully pass the examination:

a. applicants on extended military service for a period in excess of three months during the two-year time period immediately following initial examination failure; or

b. applicants who were unable to successfully pass the examination within the two-year time period immediately following initial examination failure because of illness, natural disaster, or other personal hardship.

2. Written request for an exemption under Paragraph 1 of this Subsection shall include supporting documentation.

C. Applicants who have failed the examination on three occasions, may, prior to reapplication:

C.1. - D. ...

E. Low Score Limit. An applicant who has failed the examination and has been identified as failing on two occasions with a "low score," as that term is defined by the exam vendor selected by the board, shall not be made eligible for examination. A very low score is specified in examination policies adopted by the exam vendor selected by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:747 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:387, 388 (May 1989), LR 17:664 (July 1991), LR 19:208 (February 1993), LR 26:1446 (July 2000), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3043 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**Subchapter H. Provisional License**

**§172. CAPTE Graduate Applicants Pending Examination**

A. ...

B. A provisional license granted to a CAPTE graduate pending examination pursuant to this Rule shall be issued for 90 days and shall designate board-approved supervisors at each worksite. No more than one such provisional license shall be issued to an applicant.

C. - D. ...

E. When the NPTE is available on an "on-demand" or "continuous" basis to applicants, such provisional licenses will not be issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3043 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§173. Foreign-Educated Provisional License**  
**[Formerly §159]**

A. A foreign-educated applicant who possesses all of the qualifications for licensure prescribed by §137 of this Chapter, except for §137.C, shall be issued a provisional license to engage in supervised clinical practice under the requirements of §331 for the purpose of fulfilling in whole or part the requirement of §137.C.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3044 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

## **Subchapter I. License Issuance, Termination, Renewal, Reinstatement**

### **§175. Issuance of License [Formerly §161]**

A. - C. ...

D. Evidence of license status may be verified from the board website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2415(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), LR 26:1446 (July 2000), amended by the Physical Therapy Board, LR 37:3044 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§180. Inactive License**

A. Upon written request, the board may approve inactive status to a licensee if, at the time of request, the license is current and in good standing.

B. Upon approval of inactive status by the board, the licensee shall not engage in the practice of physical therapy within the state of Louisiana. Engaging in the practice of physical therapy while inactive is a violation of this Section and may subject the licensee to disciplinary action.

C. Inactive Status Renewal

1. For inactive licensees, continuing education requirements for renewal are waived.

2. Inactive status shall be renewed in accordance with §181.

3. The inactive license renewal fee is equivalent to the fee to renew an active license, as specified in §501.

D. Reactivation of License

1. To restore an inactive license to an active status, the inactive licensee shall:

a. provide documentation satisfactory to the board of completion of the continuing education requirements specified in §194 for the continuing education period immediately preceding reactivation;

b. provide documentation satisfactory to the board that he has engaged in physical therapy practice in any jurisdiction or country within four years preceding his request to restore active license status. An individual who has not engaged in physical therapy practice for four or more years prior to restoring active license status shall comply with Paragraph D.2 of this Section.

2. The board shall restore active status of an inactive license for an individual who has not engaged in the practice of physical therapy in any jurisdiction or country for a period of four or more years under the following conditions:

a. licensee shall be subject to a three-month period of supervised clinical practice;

b. licensee may only practice under the on-premises supervision of a board approved PT who has practiced no less than three years with a Louisiana license in good standing;

c. completion of the practice assessment and satisfactory completion of continuing education courses indicated by that tool to bring the applicant's knowledge to current standards;

d. a supervision agreement must be approved by the executive director before a provisional license will be issued. The supervision agreement shall be in force for the entire three-month supervisory period. This licensee may only practice in those facilities and under the supervision of the PT named in the approved supervision agreement. Any change in practice site or supervisor must be submitted in a revised supervision agreement prior to the change taking place. At the end of the supervisory period, the supervising PT of record shall report to the board the satisfactory or unsatisfactory completion of the supervision period. If an unsatisfactory supervision period is reported by the supervising PT of record, the board, in its discretion, may require an additional three-month supervisory period; and

e. completion of remedial courses which may be prescribed by the board.

E. The inactive status of any licensee does not deprive the board of its authority to institute or continue any disciplinary or enforcement action against the licensee.

F. Licensees who voluntarily agree to abstain from the practice through an agreement with the board shall be placed on inactive status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2415(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health, Physical Therapy Board, LR 44:

### **§181. Renewal of License [Formerly §165]**

A. Licensees shall be notified by the board of license renewal deadlines. Standard procedure for license renewal and the payment of required fees is by online application through the board website. Upon written request, a renewal application shall be mailed to the licensee. Failure to receive notification of license renewal deadlines shall not be a defense for failure to timely renew a license.

B. Renewal applications received:

1. by March 31 shall be assessed a renewal fee pursuant to §501;

2. after March 31 and before April 30 shall be assessed a late renewal fee, pursuant to §501, as provided by law;

3. after April 30 shall be deemed as applications for license reinstatement pursuant to §187.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2417 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:664 (July 1991), amended by the Physical Therapy Board, LR 37:3044 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 42:1300 (August 2016), LR 44:

### **§183. Restrictions on License Renewal; Restoration**

A. As required by R.S. 37:2951, the board shall deny an application for renewal if a licensee has defaulted on a loan from the Louisiana Student Financial Assistance Commission. Upon notice from the Louisiana Student Financial Assistance Commission that a repayment agreement has been established, the license shall be renewed.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2417 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3045 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§185. Reinstatement of Suspended or Revoked License**  
**[Formerly §349]**

A. An application for reinstatement of a suspended license requires satisfaction of the requirements of §187.E.

B. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3045 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§187. Reinstatement of Lapsed License**  
**[Formerly §167]**

A. - E.6. ...

7. verification of licensure from all jurisdictions in which the applicant has applied for or held a license/permit.

F. ...

G. Any person whose license has lapsed and who has not practiced physical therapy for more than four years may apply for reinstatement of licensure upon payment of the renewal fee and the reinstatement fee under the following conditions:

1. licensee shall be subject to a three-month period of supervised clinical practice;

2. licensee may only practice under the on premises supervision of a board-approved physical therapist who has practiced no less than three years with a Louisiana license in good standing;

3. completion of a practice assessment and satisfactory completion of continuing education courses indicated by that tool to bring the applicant's knowledge to current standards;

4. a supervision agreement must be approved by the executive director before a provisional license will be issued to complete the three-month period of supervised clinical practice. The supervision agreement shall be in force for the entire three-month supervisory period. The licensee may only practice in those facilities and under the supervision of the PT named in the approved supervision agreement. Any change in practice site or supervisor must be submitted in a revised supervision agreement prior to the change taking place. At the end of the supervisory period, the supervising physical therapist shall report to the board the satisfactory or unsatisfactory completion of the supervision period. If an unsatisfactory supervision period is reported by the supervising physical therapist, the board, in its discretion, may require an additional three-month supervisory period; and

5. completion of remedial courses which may be prescribed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:748 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 28:1979 (September 2002), LR 34:1907 (September 2008), amended by the Physical Therapy

Board, LR 37:3045 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 42:1300 (August 2016), LR 44:

**Subchapter J. Continuing Education**

**§195. Content Criteria**

**[Formerly §169]**

A. - B.4.b.iv. ...

c. a maximum of five-hours credit during the renewal period for publication of scientific papers, abstracts, textbook chapters and poster or platform presentations at conferences relating to PT. Textbook chapter credit will be given only for the year of publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(B)(7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:388 (May 1989), amended LR 17:664 (July 1991), LR 19:208 (February 1993), LR 21:394 (April 1995), LR 21:1243 (November 1995), LR 16:1446 (July 2000), LR 28:1980 (September 2002), LR 34:1907 (September 2008), amended by the Physical Therapy Board, LR 37:3047 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 42:1300 (August 2016), LR 44:

**§198. Exemptions from CE Requirements**

**[Formerly §173]**

A. PTs or PTAs licensed in Louisiana are exempt from the Subchapter J continuing education requirements for the continuing education year, beginning April 1 and ending March 31 of the following year, in which they graduate from an accredited physical therapy education program. For the second year of the licensee's renewal period, 15 contact hours must be completed and reported in keeping with the requirements of §194.

B. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(B)(7) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 17:665 (July 1991), amended LR 19:208 (February 1993), LR 21:394 (April 1995), LR 34:1908 (September 2008), amended by the Physical Therapy Board, LR 37:3047 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**Subpart 2. Practice**

**Chapter 3. Practice**

**Subchapter A. General Provisions**

**§303. Professional Standards**

**[Formerly §§307 and 315]**

Editor's Note: This Section was amended utilizing information from the Sections enumerated. The Historical Note reflects prior action for those enumerated Sections. A comprehensive revision of the Louisiana Physical Therapy Board book (LAC 46:LIV) was effective via the board's October 2011 Rule in the *Louisiana Register*.

A. - B. ...

C. A PT shall exercise sound professional judgment based upon his knowledge, skill, education, training, and experience, and shall perform only those procedures for which he is competent. If, during evaluation, reassessment or screening, the PT finds that treatment which is outside the scope of his knowledge, experience, or expertise is needed, the PT shall notify the patient or client and provide a referral to an appropriate healthcare provider.

D. ...

E. A PTA may act as a clinical instructor for a PTA student, a supervisor of a PTA CAPTE provisional licensee pending examination, or a supervisor of a foreign-educated PTA (FEPTA) provisional licensee, provided that the PTA

clinical instructor has one year of supervised work experience in the practice setting in which he will act as the clinical instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 19:208 (February 1993), LR 21:395 (April 1995), LR 24:40 (January 1998), LR 26:1447 (July 2000), LR 34:1909, 1910 (September 2008), amended by the Physical Therapy Board, LR 37:3048 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§305. Practice with Prescription or Referral**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3049 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

### **§307. Physical Therapy Services without Prescription or Referral [Formerly §306]**

A. These rules are intended to facilitate and implement the provisions of R.S. 37:2418(C)(4). They are meant as practical guidelines, while maintaining flexibility in the rendering of physical therapy services, without eliminating the opportunity for oversight and supervision.

B. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 31:441 (February 2005), amended by the Physical Therapy Board, LR 37:3049 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§311. Treatment with Dry Needling**

A. ...

B. Dry needling is a physical therapy treatment which requires specialized physical therapy education and training for the utilization of such techniques. Prior to utilizing dry needling techniques in patient treatment, a PT shall provide documentation to the executive director that he has successfully completed a board-approved course of study consisting of no fewer than 50 hours of face-to-face instruction in intramuscular dry needling treatment and safety. Online and other distance learning courses will not satisfy this requirement. Practicing dry needling without compliance with this requirement constitutes unprofessional conduct and subjects a licensee to appropriate discipline by the board.

C. ...

D. Prior to performing the initial dry needling treatment on a patient the physical therapist shall educate the patient of the potential risks and benefits of dry needling and receive informed consent from the patient. Documentation of the education and consent shall be maintained in the patient treatment record.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(8) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3049 (October

2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§313. Transfer of Patient Care**

A. A PT shall notify the patient and shall document the transfer of care of the patient, as appropriate, to another health care provider in the event of elective termination of physical therapy services by the PT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(8) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3049 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§319. Use of Telehealth in the practice of Physical Therapy**

A. The board hereby adopts R.S. 40:1223.1 et seq., known as the “Louisiana Telehealth Access Act”, including any amendments thereto, and promulgates these rules to provide for, promote, and regulate the use of telehealth in the delivery of physical therapy services through telehealth. Physical therapists and physical therapist assistants owe a duty to patients to provide quality physical therapy services in accordance with the laws and rules governing the practice of physical therapy regardless of the mode in which those services are rendered. These rules shall be interpreted, construed and applied so as to give effect to such purposes and intent.

B. Individuals who are licensed physical therapists and physical therapist assistants in good standing in Louisiana may provide physical therapy via telehealth to a patient in an originating site as defined in R.S. 40:1223.3 within the jurisdiction of Louisiana and shall follow all requirements for standard of practice and documentation as provided in the Practice Act and board rules. The standard of care for telehealth services shall be at least equivalent to the standard of care for services delivered in person.

C. When providing telehealth services, a licensee shall have documented procedures in place to address remote medical or clinical emergencies at the patient’s location.

D. A physical therapist licensed in good standing in another jurisdiction who is providing information, advice, or opinion through telehealth to a physical therapist licensed in Louisiana regarding patient care shall be exempt from Louisiana licensure requirements.

E. A Louisiana licensee providing telehealth services to a patient in an originating site as defined in R.S. 40:1223.3 in a jurisdiction outside of Louisiana may be required to be licensed or registered in the jurisdiction in which the originating site is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(8) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health, Physical Therapy Board, LR 44:

### **Subchapter B. Prohibitions**

### **§321. Unauthorized Practice; Practice Restrictions [Formerly §307]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2423 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Examiners, LR 21:395 (April 1995), LR 24:40 (January 1998), LR 26:1447 (July



2000), LR 34:1909 (September 2008), amended by the Physical Therapy Board, LR 37:3050 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

### **§325. Exemptions**

#### **[Formerly §309]**

A. In accordance with R.S. 37:2408(B), a person employed as a physical therapist or a physical therapist assistant by the United States government, or any department, agency, or bureau thereof, shall not be required to obtain a license under the provisions of this Chapter. However, such person may engage in the practice of physical therapy outside the course and scope of such federal employment only after obtaining a license in accordance with this Chapter.

B. ...

C. A physical therapist or physical therapist assistant licensed in another jurisdiction of the United States or credentialed in another country performing physical therapy incidental to teaching, demonstrating or providing physical therapy services in connection with teaching or participating in an educational seminar of no more than 60 days in a calendar year, provided such physical therapist or physical therapist assistant is licensed in good standing in another jurisdiction or credentials are in good standing in another country, or holds an appointment on the faculty of a school approved for training physical therapists or physical therapist assistants.

D. Any physical therapist or physical therapist assistant licensed in a jurisdiction of the United States or credentialed in another country performing physical therapy as part of his training within a post professional residency or fellowship program in this state shall be exempt from licensure in Louisiana, provided such physical therapist is licensed in good standing in another jurisdiction or credentials are in good standing in another country.

E. A physical therapist or physical therapist assistant licensed in a jurisdiction of the United States or credentialed in another country contracted or employed to provide physical therapy to patients/clients affiliated with or employed by established athletic teams, athletic organizations or performing arts companies temporarily practicing, competing or performing in the jurisdiction for no more than 60 days in a calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Examiners, LR 24:40 (January 1998), LR 34:1909 (September 2008), amended by the Physical Therapy Board, LR 37:3051 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **Subchapter C. Supervised Practice**

#### **§330. Supervision Requirements for Graduates of Approved Schools of Physical Therapy or Physical Therapist Assisting Pending Examination**

A. A PT holding a provisional license pending examination shall engage in the practice of physical therapy under the supervision of one or more board-approved supervisor(s).

B. ...

1. daily face-to-face communication between one board-approved supervisor and the provisional license holder;

2. on premises, as defined in §123, observation of patient care by board-approved supervisors in the provisional licensee's approved practice location(s), a minimum of 2 hours per day with a minimum total of 10 hours per week; and

3. availability of the supervisor at all times to provide advice to the provisional license holder and to the patient during physical therapy treatment given by the provisional license holder.

C. ...

D. Supervisor Absence. If the board-approved clinical supervisor cannot fulfill his supervisory obligations for a CAPTE graduate pending examination provisional licensee:

1. if absent for five or fewer consecutive days, another PT in good standing may supervise in his place. In such case, the substitute PT is not required to be approved by the board; however, the board designated supervisor, the substitute supervisor, and the supervised individual, shall all be held accountable for the care provided by those supervised;

2. if absent for more than five consecutive days, the board-approved clinical supervisor of the CAPTE graduate pending examination provisional licensee shall send a written request to the executive director for approval of a substitute supervising physical therapist during his period of absence. The substitution can only occur once written approval is provided by the executive director to the designated supervisor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405.2(A)(4).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3051 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

#### **§331. Supervised Clinical Practice of Foreign-Educated Physical Therapist Provisional Licensees and Foreign-Educated Physical Therapist Assistant Provisional Licensees [Formerly §§317 and 319]**

Editor's Note: This Section was amended utilizing information from the Sections enumerated. The Historical Note reflects prior action for those enumerated Sections. A comprehensive revision of the Louisiana Physical Therapy Board book (LAC 46:LIV) was effective via the board's October 2011 Rule in the *Louisiana Register*.

A. The clinical supervisor for a foreign-educated provisional licensee must be an APTA certified clinical instructor or, within the three years prior to serving as a supervisor, have previously served as clinical instructor for a PT or PTA student as part of an approved school of physical therapy or physical therapist assisting. To be approved as a clinical supervisor of a foreign-educated provisional licensee, a PT shall have at least three years of clinical experience with an unrestricted license. A clinical supervisor is subject to ratio restrictions pursuant to R.S. 37:2418(F)(2)(a).

B. Before a foreign-educated physical therapist or foreign-educated physical therapist assistant applicant for initial licensure is issued a provisional license, the applicant shall submit to the board:

1. - 3. ...

C. The executive director shall approve or deny a request made under §331 after assessing whether the facility provides the opportunity for a provisional license holder to attain the knowledge, skills, and attitudes to be evaluated according to

a board-approved performance evaluation tool and determines if the site provides a broad base of clinical experience to the foreign-educated provisional licensee including a variety of physical agents, therapeutic exercises, evaluation procedures, and patient physical therapy diagnoses.

1. ...

D. As authorized by R.S. 37:2410(6), a foreign-educated provisional licensee shall not begin practicing physical therapy until the executive director has approved the clinical supervisor and the worksite, the foreign-educated provisional licensee has completed the personal interview with a board representative, and the executive director has issued his provisional license.

E. A provisional licensee shall complete a supervised clinical practice at a board-approved clinical site for a minimum of four hours per day, with on premises supervision by a board-approved clinical supervisor who is a physical therapist.

1. ...

2. The board-approved clinical supervisor of the foreign-educated initial applicant shall cosign all of the foreign-educated provisional licensee's treatment documentation within five days of treatment.

F. Supervisor Absence. If, due to illness or continuing education, the board-approved clinical supervisor for the foreign-educated provisional licensee cannot fulfill his supervisory obligations:

1. if absent for five or fewer consecutive days, another PT in good standing may supervise in his place. In such case, the substitute PT is not required to be approved by the board; however, the board-approved clinical supervisor of the foreign-educated provisional licensee, the substitute clinical supervisor of the foreign-educated provisional licensee, and the supervised foreign-educated provisional licensee shall all be held accountable for the care provided to the patient;

2. if absent for more than five consecutive days, the board-approved clinical supervisor of the foreign-educated provisional licensee shall send a written request to the executive director for approval of a substitute supervising physical therapist during his period of absence. The substitution can only occur once written approval is provided by the executive director to the designated supervisor.

G. The approved clinical supervisor shall:

1. observe, assist and support the provisional licensee during the supervised clinical practice;

2. rate the provisional licensee's performance during his clinical practice using a board-approved performance evaluation form or tool, indicating the dates of observation, demonstration or discussion of each skill;

3. assess skills required for success in such setting with recommendations for improvement upon completion of a supervised clinical practice site;

4. submit the results of the supervised clinical practice to the board in a timely manner. Approval of the next clinical placement or granting of license, shall not take place until this report is received and evaluated by the executive director; and

5. continue with supervised clinical practice until the supervised foreign-educated provisional licensee receives notice of termination of supervision by issuance of permanent license.

H. A provisional licensee shall not supervise any personnel unless assistance is required to ensure the safety and welfare of the patient during ambulation, transfers, or functional activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2410(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:749 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 17:667 (July 1991), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), amended by the Physical Therapy Board, LR 37:3051 (October 2011), amended by the Department of Health, Physical Therapy, LR 44:

### **§333. Physical Therapist Responsibilities; Supervision of Physical Therapist Assistants [Formerly §321]**

A. A supervising PT of record is responsible for and shall participate in the patient's care.

A.1. - B. ...

1. The level of responsibility assigned to a PTA is at the discretion of the supervising PT of record who is ultimately responsible for the care provided by this PTA.

2. ...

a. perform an initial physical therapy evaluation and create the plan of care on each patient prior to delegation of treatment;

B.2.b. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418(F) and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3052 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§335. Supervision of Physical Therapy Technicians [Formerly §321]**

A. - A.2. ...

3. To ensure the safety and welfare of a patient during ambulation, transfers, or functional activities, the PTA may utilize one or more physical therapy technicians for physical assistance without the physical therapist on premises.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418(F) and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§337. Clinical Instruction of Student PTs and PTAs [Formerly §321]**

A. A clinical instructor shall provide continuous supervision to a PT or PTA student in all practice settings. A PTA may act as a clinical instructor for a PTA student in all practice settings provided that the PT supervisor of the PTA is available by telephone or other communication device.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418(F) and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§339. Limitation on Supervision Ratios**  
**[Formerly §321]**

A. Supervision Ratio. Limitations on supervision for a physical therapist shall comply with R.S. 37:2418(F)(2)(a).

B. It is the responsibility of each PT to determine the number of individuals he can supervise safely and within the ratio set forth by law.

C. The number of individuals supervised by PTAs shall be included in the number of individuals supervised by the supervising PT of record for any given day. In no case shall the number of individuals supervised by a PTA on any given day exceed two, nor exceed the following limitations:

1. no more than one PTA provisional licensee; and
2. no more than one PTA student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2418(F) and Act 139 of 2010.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:388 (May 1989), LR 19:208 (February 1993), LR 24:41 (January 1998), LR 26:1447 (July 2000), LR 28:1980 (September 2002), LR 34:1910 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§341. Documentation Standards**  
**[Formerly §323]**

A. A written record of physical therapy treatment shall be maintained for each patient. A complete record shall include written documentation of prescription or referral (if such exists), initial evaluation, treatment(s) provided, PT/PTA conferences, progress notes, reevaluations or reassessments, and patient status at discharge all as defined in §123.

1. A prescription or referral, if it exists, may initially be a verbal order and may be later confirmed in writing. The verbal order shall be documented by the PT in the patient's record.

2. An initial physical therapy evaluation, as defined in R.S. 37:2407(A)(1), shall be created and signed by the PT performing the evaluation within seven days after performing the evaluation.

3. Progress note is the written documentation of the patient's subjective status, changes in objective findings, and progression to or regression from established goals. A progress note shall be created and signed only by the supervising PT of record or PTA. A progress note shall be written a minimum of once per week, or if the patient is seen less frequently, then at every visit.

4. Reassessment or reevaluation is the written documentation which includes all elements of a progress note, as well as the interpretation of objective findings compared to the previous evaluation with a revision of goals and plan of

care as indicated. A reassessment shall be written at least once per month, or, if the patient is seen less frequently, then at every visit. A reassessment shall be created and signed by the supervising PT of record.

5. ...

6. Patient care conference is the documentation of the meeting held between a PTA who is providing patient care and the PT supervising that care to discuss the status of patients. This conference shall be conducted where the PT and PTA are both physically present at the same time and place, or through live communication through the use of interactive, multimedia equipment that includes, at minimum, audio or video equipment, or any combination thereof, permitting two-way, real-time, and interactive communications conducted in accordance with all standards required by federal and state laws governing privacy and security of a patient's protected health information. The patient care conference shall be signed and dated by the PT and PTA and shall be entered in the patient treatment record within five days of the conference, documenting treatment recommendations and decisions made.

7. Discharge summary is the written documentation of the reasons for discontinuation of care, degree of goal achievement and a discharge plan which shall be created and signed by the supervising PT of record. A discharge summary shall be written at the termination of physical therapy care when feasible.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:750 (December 1987), amended by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 21:395 (April 1995), LR 26:1447 (July 2000), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3053 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**Subchapter D. Disciplinary Proceedings**

**§343. Sanctions in Disciplinary Proceedings**  
**[Formerly §325]**

A. ...

B. Board orders in disciplinary proceeding may require the respondent to reimburse the board in accordance with R.S. 37:2405(B)(11).

C. In placing a respondent on suspension or probation, the board may impose such additional terms, conditions and restrictions as it deems appropriate for the period of suspension or probation. The board shall specify in its order the exact duration of the suspension or probationary period. Upon finding that a respondent placed on probation has failed to comply with the terms and conditions of the board order, the board may take such additional disciplinary action as it deems appropriate, following notice and hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3054 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§345. Unprofessional Conduct**  
**[Formerly §327]**

A. The board shall deem a violation any charge of conduct which fails to conform to the Practice Act, and board rules to carry out the provisions of the Act, and shall take appropriate action where violations are found. The rules of this Chapter complement the board's authority to deny, suspend, revoke or take such other action against a licensee, as it deems appropriate.

B. As used in R.S. 37:2420(A)(7) of the Practice Act and in these rules, the term unprofessional conduct does not require actual injury to a patient, and includes, but is not limited to, the following:

1. departure from, failure to conform to, or failure to perform on a continuing basis to the minimal standards of acceptable and prevailing physical therapy practice as defined in §123, or the commission of any act contrary to honesty, justice, good morals, patient safety or the best interest of the patient, whether committed in the course of the licensee's practice or otherwise, regardless of whether actual injury to a patient results therefrom, including, but not limited to:

- a. ...
- b. failing to assess a patient's status at every visit;
- c. performing or attempting to perform procedures for which the licensee is not qualified by education, experience, licensure, or training;
- d. failure to inform and refer the patient or client to an appropriate practitioner, when the licensee becomes aware of findings and/or the need for treatment which are outside the scope of the PT's competence;
- e. providing treatment interventions that are not warranted by the patient's condition or continuing treatment beyond the point of reasonable benefit to the patient;
- f. providing substandard care as a PTA by exceeding the authority to perform components of physical therapy interventions selected by the supervising PT of record or through a deliberate or negligent act or failure to act, whether or not actual injury to any person occurred;
- g. causing, or permitting another person to cause, physical or emotional injury to the patient, or depriving the patient of his individual dignity; or
- h. abandoning a patient without documenting the transfer of care or by inappropriately terminating the patient/practitioner relationship;

2. ...

a. delegate professional, physical therapy, or, if applicable, physical therapist assistant responsibilities to a person the PT or PTA knows, or has reason to know, is not qualified by education, training, experience or licensure to perform the function or responsibility involved; or

2.b - 6. ...

7. conviction of any crime or entry of a plea of guilty or nolo contendere to any criminal charge arising out of or related to the practice of physical therapy or which constitutes behavior which could put the person or property of patients at risk of harm from a treating licensee, or failing to notify the board of the same within seven days of conviction or entry of a plea of guilty or nolo contendere;

8. - 9. ...

10. making or participating in any communication, advertisement, or solicitation which is false, fraudulent, deceptive, misleading or unfair in violation of board rules, or

which contains a false, fraudulent, deceptive, misleading or unfair statement or claim, including, but not limited to:

a. documenting services provided which have not been provided as documented or billing for services which have not been provided;

11. ...

12. practicing or enabling practice by an impaired provider as defined in §123, a licensee shall not:

a. engage in the practice of physical therapy while under the influence of a mood-altering substance that compromises the professional judgment or practice or has the potential to compromise the medical judgment or practice;

b. enable practice by an impaired provider;

c. fail to submit to physical or mental examination or for drug screening or testing at the time and place directed by the executive director following receipt of apparently reliable information or report alleging impairment, pursuant to §351, or as otherwise provided in the rules;

13. ...

14. allowing another person to use a licensee's wall certificate, pocket identification card, license number, national provider identifier, or other official document which identifies the holder as a licensee for any purpose other than to identify himself as the lawful holder of those credentials;

15. failure to notify the board of a felony arrest or arrest related to habitual intemperance as defined in §351, institution of formal criminal charges either by indictment or bill of information, and conviction, including, but not limited to, a guilty plea or a plea of nolo contendere, within seven days of such arrest, criminal charge, or conviction.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3054 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

**§351. Substance Abuse and Habitual Intemperance**  
**[Formerly §327]**

A. - A.1. ...

2. the ingestion, self-administration, or other use of legally controlled substances or medications which affect the central nervous system, other than pursuant to and used in accordance with a lawful prescription and/or medical advice; or

3. repeated excessive use or abuse of any mood altering or mind altering substance that may negatively impact the ability of a licensee to safely practice physical therapy.

B. ...

C. If the board receives apparently reliable information, including, but not limited to, reports made pursuant to R.S. 37:1745.14, which information or report puts in question a licensee's or applicant's current fitness and ability to practice physical therapy with reasonable skill and safety to patients, the licensee or applicant shall submit to such physical or mental examination, evaluation, test, or drug/alcohol screen as requested by the executive director to determine the licensee's or applicant's fitness and ability to practice physical therapy with reasonable skill and safety to patients.

D. A respondent shall appear for drug screening and testing at the facility designated by the executive director within six hours of initial contact by the board representative sent to the telephone number or email address designated for such purposes by respondent pursuant to §355, or as otherwise provided in the rules.

E. Records of such examinations, evaluations, tests, and screens shall be maintained by the board in confidence unless such records are admitted into the record of any adjudication proceeding before the board or subpoenaed by a court order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3056 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§353. Recovering Physical Therapy Program (RPTP)**

A. Under the provisions of R.S. 37:2402 and following, the board has the authority to establish and implement recovery programs for PTs and PTAs as an alternative to the disciplinary process. The RPTP is established to assist board licensees who have demonstrated actual or potential inability to practice physical therapy with reasonable skill and safety to patients because of impairment as defined in §123. The goal of the RPTP is for PTs or PTAs to be treated and to return to practice in a manner which will not endanger public health, safety and welfare.

B. Eligibility. The following persons are eligible for participation in the RPTP:

1. a Louisiana-licensed PT or PTA;
2. a graduate of a school of physical therapy or physical therapist assisting eligible for licensure in Louisiana;
3. a PT or PTA currently enrolled in a peer assistance/alternative program in another jurisdiction and requesting licensure in Louisiana;

C. Objective. The RPTP objectives are:

1. to ensure the health, safety and welfare of the public through a program which closely monitors practitioners whose capacity to practice physical therapy with reasonable skill and safety to patients has been, or may potentially be, compromised because of impairment as defined by §123;
2. to encourage voluntary participation of licensees in appropriate rehabilitative medical treatment and ongoing aftercare and monitoring;
3. to promote safe physical therapy care by preventing and/or restricting the practice of impaired licensees; and
4. to provide a structured program for participants seeking recovery from impairment.

D. Referrals to RPTP. Upon receipt of a complaint which involves a licensee, or reliable information of the impairment of persons eligible for participation in the RPTP as specified in Subsection B of this Section, the executive director may refer eligible persons for participation in the RPTP. Only eligible persons whose conditions have reliable indicators for return to safe practice will be permitted to participate in the RPTP.

E. Defer or Suspend Disciplinary Proceedings. When disciplinary proceedings have been initiated or could be initiated against a licensee pursuant to R.S. 37:2401-2424,

such proceedings may be deferred or suspended to allow the licensee to participate in the RPTP.

F. An eligible person as defined in Subsection B of this Section not meeting the criteria of §357 may be admitted into the RPTP by the board pursuant to any adjudication order.

G. In addition to providing an alternative to discipline, the RPTP accepts eligible persons who have been diagnosed with a physical, and/or mental impairment, or substance abuse and/or dependency and eligible persons already subject to discipline ordered by the board.

H. When a licensee ceases to be in compliance with his RPTP agreement, he shall be referred back to the board for regular disciplinary proceedings or such action as authorized in the RPTP agreement.

I. Use of Outside Contractor. The RPTP may be administered by board staff directly or the board may delegate to a qualified outside contractor the administration and operation of all or part of RPTP on such terms as it deems prudent. Such contractor shall be charged with the powers and responsibilities set forth in these rules. If delegated to a qualified outside contractor, the board shall cooperate with a contract operator of RPTP and shall act responsibly to meet its obligations under the Practice Act, board rules, RPTP agreements and contracts with outside contractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3056 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§355. Objectives of RPTP**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3056 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

### **§357. Admission to the Confidential Recovering Physical Therapy Program (CRPTP)**

A. Participation in CRPTP may be voluntary, non-punitive, confidential, and in place of formal disciplinary proceedings for eligible persons who meet the following admission criteria:

1. voluntary request for admission to RPTP whether referred by self or other sources;
2. addiction to or use of alcohol and/or other mood altering substances including prescription drugs, or has a physical or mental condition, which impairs or potentially impairs the ability of the eligible person to perform duties safely;
3. no previous disciplinary action involving impairment by any licensing authority;
4. has no criminal convictions or pending criminal charge that involves violence or danger to another person, or involves a crime which constitutes a threat to patient care;
5. no diversion of chemicals;
6. no dealing or selling of illicit drugs;
7. no coexisting untreated physical, emotional or psychiatric problems which would impair physical therapy competency;
8. no related practice problems involving death or significant harm to a patient; and

9. agrees to comply with all RPTP requirements and signs the RPTP agreement including a statement acknowledging chemical dependency or other impairment.

B. Involvement by the participant in the CRPTP will remain confidential and shall not be subject to discovery in a legal proceeding except as required by federal and state confidentiality laws as long as the licensee complies with all stipulations of the RPTP agreement.

1. The board may cause to be made non-confidential the records, files and information related to a successfully completed RPTP in the event that a former participant becomes the subject of a subsequent disciplinary action for violation of the Practice Act or board rules related to substance abuse and/or chemical dependency unless such records are protected by federal and state confidentiality laws and regulations.

C. When a licensee ceases to be in compliance with his confidential RPTP agreement, he shall be referred back to the board for regular disciplinary proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3056 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

#### **§359. Discretionary Authority**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3057 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

#### **§365. Licensure of Persons with a History of Substance Abuse**

A. As authorized by R.S. 37:2420(A)(5), the board may refuse to license any applicant, or may refuse to renew the license of any person, or may restrict, suspend or revoke any license upon proof that a person has been habitually intemperate or abused controlled dangerous substances as defined by federal or Louisiana law.

B. In reviewing a history of substance abuse, the board may consider, among other evidence, the following in determining fitness to practice physical therapy and appropriate board action:

B.1. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3057 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

#### **§367. Substance Abuse Recovery Program [Formerly §355]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3057 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

#### **§369. Disclosure of Financial Interest and Abuse of Referrals**

**[Formerly §327]**

A. Declaration of Purpose; Interpretation and Application. Physical therapists and physical therapist assistants owe a fiduciary duty to patients to exercise their professional judgment in the best interests of their patients in providing, furnishing, recommending, or referring patients for health care items and services, without regard to personal financial recompense. The purpose of these rules and the laws they implement is to prevent payments by or to a health care provider as a financial incentive for the referral of a patients to a health care provider for diagnostic or therapeutic services or items. These rules shall be interpreted, construed and applied so as to give effect to such purposes and intent.

B. ...

C. Violation of R.S. 37:1744 shall be a violation of these rule and the laws they implement.

D. Violation of R.S. 37:1745 shall be a violation of these rules and the laws they implement.

E. General Exceptions. Any payment, remuneration, practice, or arrangement, which is not prohibited by or unlawful under §1128B(b) of the federal Social Security Act (Act), 42 U.S.C. §1320a-7b(b), as amended, with respect to health care items or services for which payment may be made under title XVIII or title XIX of the Act, including those payments and practices sanctioned by the secretary of the United States Department of Health and Human Services, through the Office of the Inspector General, pursuant to §1128B(b)(3)(E) of the Act, through regulations promulgated at 42 CFR §1001.952, as the same may hereafter be amended, shall not be deemed a payment prohibited by R.S. 37:1745(B) or by §369 of these rules with respect to health care items or services for which payment may be made by any patient, private, or governmental payer.

F. Sanctions. Upon proof of a violation, the board may suspend or revoke, refuse to issue, or impose probationary or other restrictions on any license and shall order the refund of all such sums received in payment for the goods and services furnished or rendered without disclosure of financial interest. Such a refund shall be paid to the individual patient, third-party payor, or other entity who made the payment.

G. The board shall submit to the commissioner of insurance an annual report listing the investigations undertaken pursuant to this Section, including the number of violations and the sanctions imposed, if any.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 28:1981 (September 2002), LR 34:1911 (September 2008), amended by the Physical Therapy Board, LR 37:3058 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§371. Cease and Desist Orders; Injunctive Relief** **[Formerly §353]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2422 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3058 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

### **§373. Violations**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2421 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Physical Therapy Board, LR 37:3058 (October 2011), repealed by the Department of Health, Physical Therapy Board, LR 44:

### **§375. Disciplinary Process and Procedures** **[Formerly §329]**

A. - C. ...

D. Pursuant to 45 CFR 60.1, the board is required to report certain information, including final adverse actions it has taken against its licensees, to the NPDB. The board may designate an agent to act on its behalf to report information

and submit queries to the NPDB as required by federal law, as may be amended from time-to-time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:389 (May 1989), amended LR 19:208 (February 1993), LR 26:2792 (December 2000), amended by the Physical Therapy Board, LR 37:3059 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§377. Initiation of Complaints** **[Formerly §331]**

A. Complaints may be initiated by any person or by the board on its own initiative. A licensee is obligated to report to his supervisor or employer, and to the board, violations of the Practice Act, board rules or the minimal standards of acceptable and prevailing physical therapy practice as defined in §123.

B. Failure by a licensee to report such violations to his supervisor or employer and to the board may subject the licensee to disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 19:208 (February 1993), LR 26:1448 (July 2000), amended by the Physical Therapy Board, LR 37:3059 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§379. Emergency Action** **[Formerly §343]**

A. In accordance with R.S. 49:961, if the board finds that public health, safety, and welfare require emergency action and incorporates a finding to that effect in its order, a summary suspension of a license may be ordered pending proceedings for suspension, revocation or other action. Such proceedings shall be promptly instituted and determined.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3059 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§381. Disposition of Complaints** **[Formerly §§333 and 335]**

Editor's Note: This Section was amended utilizing information from the Sections enumerated. The Historical Note reflects prior action for those enumerated Sections. A comprehensive revision of the Louisiana Physical Therapy Board book (LAC 46:LIV) was effective via the board's October 2011 Rule in the *Louisiana Register*.

A. - A.2. ...

3. *letter of concern*, as defined in §123;

4. consent order. If the respondent and the board member participating in the Investigative Committee agree on the essential facts and law arising out of the complaint and on sanctions to be imposed on the respondent, the complaint may be resolved by a consent order to be presented by the participating board member or by board legal counsel for approval, amendment or rejection. If accepted by the board and the respondent, the consent order shall be finalized as a board order and shall be reported to the NPDB and published as a disciplinary action of the board;

5. dismissal:

a. a complaint may be dismissed for the following reasons:

i. the absence of adequate, credible evidence; or  
ii. other reasons which the Investigative Committee believes are justification for dismissal;

b. when it is the decision of the Investigative Committee to dismiss a complaint, the complainant shall be provided with a letter explanation for dismissal of the complaint;

6. education. After review and investigation of a complaint, the Investigative Committee may require the licensee to participate in an educational meeting with the Investigative Committee, or other persons as delegated by the Investigative Committee, to discuss the laws and rules as they apply to the practice of physical therapy. Request for an educational meeting shall be in writing and shall provide the date, time, location, and matters to be discussed. This meeting shall be confidential and shall not be reported to the NPDB nor published as a disciplinary action of the board. Failure to comply with the request for an educational meeting shall be deemed a failure to cooperate with the board in violation of §383.A.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2420 and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:390, 391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3059 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§383. Failure to Respond or Cooperate with the Board [Formerly §341]**

A. ...

1. respond or provide information or items requested, respond to a subpoena, comply to a request for a meeting, or complete an evaluation within the time designated by the board or its staff;

A.2. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3060 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§387. Formal Hearings [Formerly §337]**

A. - C.1. ...

2.a. The complaint is investigated by the Investigative Committee as defined in §123 to determine if there is sufficient evidence to warrant disciplinary proceedings. Once the complaint is under investigation, no board member (except board members serving as members of an Investigative Committee) shall receive or review any information relevant to the subject matter of the investigation or communicate with the respondent or his legal representative, potential witnesses, or any member of the Investigative Committee concerning any issue of fact or law relevant to the investigation. A board member who has served on the Investigative Committee shall not serve as a member of a hearing panel of the board in the adjudication of a case previously investigated by the board member.

2.b. - 6....

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:205(B)(10) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3060 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **§392. Order of Hearing [Formerly §337]**

A. - A.3. ...

a. which evidence may include, but is not limited to, all evidence admissible pursuant to R.S. 49:956(2) and (3);

b. as part of the board's case in chief, the board's representative may call the respondent under cross examination;

4. - 5. ...

a. which evidence may include, but is not limited to, all evidence admissible pursuant to R.S. 49:956(2) and (3);

6. - 10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(B)(10) and Act 535 of 2009.

HISTORICAL NOTE: promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:391 (May 1989), LR 19:208 (February 1993), amended by the Physical Therapy Board, LR 37:3062 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 44:

### **Subpart 3. Fees**

#### **Chapter 5. Fees**

#### **§501. Fees**

A. - B. ...

C. If the biennial renewal fee is received by the board office on or subsequent to May 1, the applicant shall apply for reinstatement pursuant to §187 and shall pay the renewal fee and the reinstatement fee.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2405(A)(1) and Act 535 of 2009.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Physical Therapy Examiners, LR 13:744 (December 1987), amended by the Department of Health and Hospital, Board of Physical Therapy Examiners, LR 15:392 (May 1989), LR 17:667 (July 1991), LR 18:963 (September 1992), LR 21:396 (April 1995), LR 28:1982 (September 2002), amended by the Physical Therapy Board, LR 37:3063 (October 2011), amended by the Department of Health, Physical Therapy Board, LR 42:1301 (August 2016), LR 44:

#### **Family Impact Statement**

These amendments will have no direct effect on the stability of the family. If there is any effect, it would be a positive effect on the stability of the family, as it will allow licensees more flexibility in maintaining a license to practice physical therapy in Louisiana without having to allow it to expire or continue to pay for coursework and for coursework approval by creating an Inactive status of license. The amendment will not affect the authority and rights of persons regarding the education and supervision of their children and will not have an effect on the functioning of the family. This amendment will impact the family budget of individuals



who choose Inactive status because they will not have to pay for courses in Louisiana to maintain a license if they change it to inactive status. This amendment will not affect the behavior or personal responsibility of children. This amendment will not have an effect on the ability of the family or local government to perform any functions that they currently are performing.

#### **Poverty Impact Statement**

The proposed amendments have no foreseeable impact on any child, individual or family as defined by R.S. 49:973(B).

#### **Provider Impact Statement**

The proposed amendment do not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session.

#### **Public Comments**

Interested persons may submit written comments until 4:30 pm, October 10, 2018, to Charlotte F. Martin, Louisiana Physical Therapy Board, 104 Fairlane Drive, Lafayette, LA 70507.

Charlotte Martin  
Executive Director

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Licensing and Certification**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule changes will result in administrative cost increases for the LA Physical Therapy Board (LPTB) that the board anticipates will be absorbed utilizing existing resources. For reference, the LPTB's budget is funded entirely using self-generated revenues. A majority of the proposed rule changes are technical in nature, and consist of clarification and further elaboration of existing rules to conform with statute and present board practice. However, the proposed rule changes also include substantive revisions for licensure of foreign-trained physical therapists (PTs) and physical therapy assistants (PTAs), the creation of an "inactive" status for PT licenses, and promulgation of rules regarding the use of telehealth by PTs.

Up-front costs associated with the proposed rule changes are publication costs for publishing the notice of intent and associated form in the Louisiana Register, as well as editing the policies, forms, and the website to reflect the proposed rule changes. The aforementioned costs associated with editing policies, forms, and the LPTB will be minimum, since a majority of LPTB forms and policies are electronic and available on the LPTB website.

Furthermore, the proposed rule changes create an exception for license applicants who fail the initial licensing examination and may not be able to retake the examination within the required 2-year period after the initial examination. Revisions to Rule 171 allow for an extension of the 2-year examination period under circumstances upon written request and approval by the board (see Part III). The board does not anticipate this rule change to affect expenditures, as cases requiring exceptions to the 2-year retake period are rare.

The proposed rule changes include substantive revisions to Rules 135-139 that streamline the process for licensing foreign-trained physical therapists (PTs) and physical therapy assistants (PTAs). While the process for licensing foreign-trained PTs and PTAs is streamlined, the LPTB reports few applications for

licensure by foreign-trained persons prior to the proposed rule changes (approximately 2 annually), and does not anticipate an increase of applications as a result of the streamlined process.

Creation of an "inactive" license status for PT and PTA licenses may result in a marginal cost and workload increase for the LPTB, as the board may grant inactive license status to applicants upon review of a written request. However, the extent to which this will affect costs and workload for the board is unknown, though likely marginal.

The LPTB promulgating rules associated with PTs providing care through telehealth do not carry explicit costs or workload increases for the board, but allow PTs another method through which they can provide services (see Part III).

Lastly, the proposed rule changes eliminate the requirement that persons seeking licenses must interview with an LPTB member prior to licensure. Elimination of this requirement may result in a savings for the LPTB to the extent members received per diem and/or expense reimbursements for interviewing potential licensees.

The proposed rule changes will not affect expenditures of local governmental units.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule changes will not affect revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

Foreign-trained PTs and PTAs will benefit from the proposed rule changes, as they will now be able to obtain licensure in Louisiana without completing 333 clinical hours in a hospital setting, which previously made obtaining licensure more difficult.

The proposed rule changes may benefit applicants for licensure who fail the initial examination and are unable to retake the examination within the required 2-year period after the initial examination. Revisions to Rule 171 allow for an extension of the 2-year examination period under certain circumstances upon written request and approval by the board. Circumstances include applicants engaged in military deployment for 3 or more months during the 2-year period and applicants who are unable to retake within in the 2-year period due to illness, natural disaster or other personal hardship. Therefore applicants meeting and proving the aforementioned circumstances may benefit by having a longer time to take the licensure exam.

PTs and PTAs seeking inactive license status will benefit from the proposed rule changes due to continuing education requirements being waived for those seeking inactive license status. As a result, persons seeking inactive status will realize a savings by no longer having to take continuing education classes. However, persons holding inactive license status will still be subject to the current license renewal fee of \$140 per year.

Providers may benefit from the adoption of telehealth provisions by the LPTB, as it would allow them to another means by which to provide care and consult with patients. However, the telehealth provisions also require licensees providing telehealth services to have documented procedures to address emergent clinical or medical emergencies at patient locations, which may result in an indeterminable workload increase for providers utilizing telehealth to deliver services.

Persons seeking licensure from the LPTB may benefit from the repeal of provisions requiring an interview with a member of the LPTB. No longer having to be interviewed prior to licensure may expedite the process and result in applicants receiving their licenses quicker.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

Adoption of rules associated with providing services via telehealth may increase employment opportunities for PTs and

PTAs to the extent clinics begin to utilize telehealth. However, the aggregate effect on employment from the adoption of telehealth services cannot be determined because the number of firms that may elect to provide services in this manner is unknown.

Furthermore, adoption of rules associated with telehealth may affect competition to the extent electing to providing services in this manner allows some firms to gain competitively over firms that do not. However, the aggregate effect on competition cannot be determined and is dependent upon the number of firms electing to deliver services via telehealth.

Charlotte Martin  
Executive Director  
1809#054

John D. Carpenter  
Legislative Fiscal Officer  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of Insurance Office of the Commissioner

#### Medicare Supplemental Insurance Minimum Standards (LAC 37:XIII.Chapter 5)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950, et seq., hereby gives notice of its intent to amend Regulation 78—Policy Form Filing Requirements.

The proposed regulation is being amended to be in uniform with the Medicare Access and CHIP Reauthorization Act of 2015 (“MACRA”), which was signed into law on April 16, 2015. Section 401 of MACRA prohibits the sale of Medigap policies that cover Part B deductibles to “newly eligible” Medicare beneficiaries defined as those individuals who: have attained age 65 on or after January 1, 2020; or first become eligible for Medicare due to age, disability or end-stage renal disease, on or after January 1, 2020.

#### Title 37

#### INSURANCE

#### Part XIII. Regulations

#### Chapter 5. Regulation 33—Medicare Supplement Insurance Minimum Standards

#### §501. Purpose

A. - A.4. ...

5. to incorporated Medigap policies that cover Part B deductibles to “newly eligible” Medicare beneficiaries defined as those individuals who:

a. have attained age 65 on or after January 1, 2020;

or

b. first become eligible for Medicare due to age, disability or end-stage renal disease, on or after January 1, 2020.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:224 and 42 U.S.C. 1395 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1101 (June 1999),

repromulgated LR 25:1481 (August 1999), LR 29:2434 (November 2003), LR 31:31:2902 (November 2005), amended LR 44:

#### §502. Applicability and Scope

A. - B ...

C. Updating Regulation 33 to comply with Medicare Access and CHIP Reauthorization Act.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:224 and 42 U.S.C. 1395 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1101 (June 1999), repromulgated LR 25:1481 (August 1999), LR 29:2434 (November 2003), LR 31:31:2902 (November 2005), amended LR 44:

#### §510. Minimum Benefit Standards for Pre- Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery Prior to July 20, 1992

A. - A.2.e. ...

f. coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductibles (\$183);

g. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1111 (re-designated from LSA-R.S. 22:224 pursuant to Acts 2008, No. 415, effective January 1, 2009) and 42 U.S.C. 1395 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1103 (June 1999), repromulgated LR 25:1483 (August 1999), amended LR 29:2437 (November 2003), LR 31:2905 (November 2005), LR 35:1115 (June 2009), amended LR 44:

#### §521. Standard Medicare Supplement Benefit Plans for 2010 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery with an Effective Date for Coverage on or After June 1, 2010

A. - A.5.f.ii ...

g. Standardized Medicare supplement benefit Plan G shall include only the following: the basic (core) benefit as defined in §516.A.2 of this regulation, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in §516.A.3.a, c, e, and f, respectively. Effective January 1, 2020, the standardized benefit plans described in §522.A.1.d. of this regulation (Redesignated Plan G High Deductible) may be offered to any individual who was eligible for Medicare prior to January 1, 2020.

5.h. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1111 (re-designated from LSA-R.S. 22:224 pursuant to Acts 2008, No. 415, effective January 1, 2009) and 42 U.S.C. 1395 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR:35:1118 (June 2009), amended LR 44:

#### §522. Standard Medicare Supplement Benefit Plans for 2020 Standardized Medicare Supplement Benefit Plan Policies or Certificates Issued for Delivery to Individuals Newly Eligible for Medicare on or After January 1, 2020.

A. The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) requires the following standards are

applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state to individuals newly eligible for Medicare on or after January 1, 2020. No policy or certificate that provides coverage of the Medicare Part B deductible may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate to individuals newly eligible for Medicare on or after January 1, 2020. All policies must comply with the following benefit standards. Benefit plan standards applicable to Medicare supplement policies and certificates issued to individuals eligible for Medicare before January 1, 2020, remain subject to the requirements of Regulation 33.

1. **Benefit Requirements.** The standards and requirements of §521 shall apply to all Medicare supplement policies or certificates delivered or issued for delivery to individuals newly eligible for Medicare on or after January 1, 2020, with the following exceptions:

a. standardized Medicare supplement benefit Plan C is redesignated as Plan D and shall provide the benefits contained in §521.A.5.c of this regulation but shall not provide coverage for 100 percent or any portion of the Medicare Part B deductible.

b. standardized Medicare supplement benefit Plan F is redesignated as Plan G and shall provide the benefits contained in §521.A.5.e of this regulation but shall not provide coverage for 100 percent or any portion of the Medicare Part B deductible.

c. standardized Medicare supplement benefit plans C, F, and F with high deductible may not be offered to individuals newly eligible for Medicare on or after January 1, 2020.

d. standardized Medicare supplement benefit Plan F with high deductible is redesignated as Plan G with high deductible and shall provide the benefits contained in §521.A.5.f of this regulation but shall not provide coverage for 100 percent or any portion of the Medicare Part B deductible; provided further that, the Medicare Part B deductible paid by the beneficiary shall be considered an out-of-pocket expense in meeting the annual high deductible.

e. the reference to Plans C or F contained in §521.A.1.b. is deemed a reference to Plans D or G for purposes of this section.

2. **Applicability to Certain Individuals.** This §522, applies to only individuals that are newly eligible for Medicare on or after January 1, 2020:

a. by reason of attaining age 65 on or after January 1, 2020; or

b. by reason of entitlement to benefits under part A pursuant to section 226(b) or 226A of the Social Security Act,

or who is deemed to be eligible for benefits under section 226(a) of the Social Security Act on or after January 1, 2020.

3. **Guaranteed Issue for Eligible Persons.** For purposes of §535.E., in the case of any individual newly eligible for Medicare on or after January 1, 2020, any reference to a Medicare supplement policy C or F (including F with high deductible) shall be deemed to be a reference to Medicare supplement policy D or G (including G with high deductible), respectively, that meet the requirements of this §522 A.1.

4. **Applicability to Waivered States.** In the case of a State described in section 1882(p)(6) of the Social Security Act ("waivered" alternative simplification states) MACRA prohibits the coverage of the Medicare Part B deductible for any Medicare supplement policy sold or issued to an individual that is newly eligible for Medicare on or after January 1, 2020.

5. **Offer of Redesignated Plans to Individuals other than Newly Eligible.** On or after January 1, 2020, the standardized benefit plans described in Subparagraph A.1.d, above may be offered to any individual who was eligible for Medicare prior to January 1, 2020, in addition to the standardized plans described in §521.A.5. of this regulation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:1111 (re-designated from LSA-R.S. 22:224 pursuant to Acts 2008, No. 415 and 42 U.S.C. 1395 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR:

#### **§535. Guaranteed Issue for Eligible Persons**

A. - B. ...

1. The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide some or all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary or secondary to Medicare and the plan terminates or the plan ceases to provide some or all health benefits to the individual or the individual leaves the plan.

B.2. - F.2. ...

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:1111 (re-designated from LSA-R.S. 22:224 pursuant to Acts 2008, No. 415, effective January 1, 2009) and 42 U.S.C. 1395 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1110 (June 1999), repromulgated LR 25:1490 (August 1999), amended LR 29:2444 (November 2003), LR 31:2912 (November 2005), LR:35:1120 (June 2009), amended LR 44:

#### **§560. Required Disclosure Provisions**

A. - D.3.b. ...

4. the following items shall be included in the outline of coverage in the order prescribed below.

### Benefit Chart of Medicare Supplement Plans Sold for Effective Dates on or After June 1, 2010

This chart shows the benefits included in each of the standard Medicare supplement plans. Every company must make Plan "A" available. Some plans may not be available in Louisiana.

**Basic Benefits:**

- Hospitalization – Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
- Medical Expenses – Part B coinsurance (generally 20% of Medicare-approved expenses) or copayments for hospital outpatient services.  
Plans K, L and N require insureds to pay a portion of Part B coinsurance or co-payments.
- Blood – First three pints of blood each year.
- Hospice – Part A coinsurance

A	B	C	D	F	F*	G
Basic, including 100% Part B coinsurance	Basic, including 100% Part B coinsurance	Basic, including 100% Part B coinsurance	Basic, including 100% Part B coinsurance	Basic, including 100% Part B coinsurance*		Basic, including 100% Part B coinsurance
		Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance		Skilled Nursing Facility Coinsurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible		Part A Deductible
		Part B Deductible		Part B Deductible		
				Part B Excess (100%)		Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency		Foreign Travel Emergency
K	L	M	N			
Hospitalization and preventive care paid at 100%; other basic benefits paid at 50%	Hospitalization and preventive care paid at 100%; other basic benefits paid at 75%	Basic, including 100% Part B coinsurance	Basic, including 100% Part B coinsurance, except up to \$20 copayment for office visit, and up to \$50 copayment for ER			
50% Skilled Nursing Facility Coinsurance	75% Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance	Skilled Nursing Facility Coinsurance			
50% Part A Deductible	75% Part A Deductible	50% Part A Deductible	Part A Deductible			
		Foreign Travel Emergency	Foreign Travel Emergency			
Out-of-pocket limit \$[5240]; paid at 100% after limit reached	Out-of-pocket limit \$[2620]; paid at 100% after limit reached					

\* Plan F also has an option called a high deductible Plan F. This high deductible plan pays the same benefits as Plan F after one has paid a calendar year \$[2240] deductible. Benefits from high deductible plan F will not begin until out-of-pocket expenses exceed \$[2240]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but do not include the plan's separate foreign travel emergency deductible.

**NOTICE [Boldface Type]**

This policy may not fully cover all of your medical costs.

[for agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]

[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult *Medicare and You* for more details.

### Benefit Chart of Medicare Supplement Plans Sold on or after January 1, 2020

This chart shows the benefits included in each of the standard Medicare supplement plans. Some plans may not be available. Only applicants' first eligible for Medicare before 2020 may purchase Plans C, F, and high deductible F.

NOTE: A ✓ MEANS 100% OF THE BENEFIT IS PAID.

Benefits	Plans Available to All Applicants								Medicare first eligible before 2020 only	
	A	B	D	G <sup>1</sup>	K	L	M	N	C	F <sup>1</sup>
Medicare Part A coinsurance and hospital coverage (up to an additional 365 days after Medicare benefits are used up)	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Medicare Part B coinsurance or Copayment	✓	✓	✓	✓	50%	75%	✓	✓ <sup>3</sup> copays apply	✓	✓

Benefits	Plans Available to All Applicants								Medicare first eligible before 2020 only	
	A	B	D	G <sup>1</sup>	K	L	M	N	C	F <sup>1</sup>
Blood (first three pints)	✓	✓	✓	✓	50%	75%	✓	✓	✓	✓
Part A hospice care coinsurance or copayment	✓	✓	✓	✓	50%	75%	✓	✓	✓	✓
Skilled nursing facility coinsurance			✓	✓	50%	75%	✓	✓	✓	✓
Medicare Part A deductible		✓	✓	✓	50%	75%	50%	✓	✓	✓
Medicare Part B deductible									✓	✓
Medicare Part B excess charges				✓					✓	✓
Foreign travel emergency (up to plan limits)			✓	✓			✓	✓	✓	✓
Out-of-pocket limit in [2018] <sup>2</sup>					[\$5,240] <sup>2</sup>	[\$2,620] <sup>2</sup>				

<sup>1</sup> PLANS F AND G ALSO HAVE A HIGH DEDUCTIBLE OPTION WHICH REQUIRE FIRST PAYING A PLAN DEDUCTIBLE OF [\$2240] BEFORE THE PLAN BEGINS TO PAY. ONCE THE PLAN DEDUCTIBLE IS MET, THE PLAN PAYS 100% OF COVERED SERVICES FOR THE REST OF THE CALENDAR YEAR. HIGH DEDUCTIBLE PLAN G DOES NOT COVER THE MEDICARE PART B DEDUCTIBLE. HOWEVER, HIGH DEDUCTIBLE PLANS F AND G COUNT YOUR PAYMENT OF THE MEDICARE PART B DEDUCTIBLE TOWARD MEETING THE PLAN DEDUCTIBLE.

<sup>2</sup> PLANS K AND L PAY 100% OF COVERED SERVICES FOR THE REST OF THE CALENDAR YEAR ONCE YOU MEET THE OUT-OF-POCKET YEARLY LIMIT.

<sup>3</sup> PLAN N PAYS 100% OF THE PART B COINSURANCE, EXCEPT FOR A CO-PAYMENT OF UP TO \$20 FOR SOME OFFICE VISITS AND UP TO A \$50 CO-PAYMENT FOR EMERGENCY ROOM VISITS THAT DO NOT RESULT IN AN INPATIENT ADMISSION.

**Plan A**  
**Medicare (Part A)—Hospital Services—Per Benefit Period**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

Services	Medicare Pays	Plan Pays	You Pay
<b>Hospitalization*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[1340]	\$0	\$[1340] (Part A deductible)
61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
91st day and after:	All but \$[670] a day		
--While using 60 lifetime reserve days		\$[670] a day	\$0
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0**
--Beyond the additional 365 days	\$0	\$0	All Costs
<b>Skilled Nursing Facility Care*</b> You must meet Medicare's requirements including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[167.50] a day	\$0	Up to \$[167.50] a day
101st day and after	\$0	\$0	All costs
<b>Blood</b> First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>Hospice Care</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness.	All but very limited copayment/coinsurance for out-patient drugs and inpatient respite Care	Medicare copayment/ Coinsurance	\$0

\*\*NOTE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**Plan A**

**Medicare (Part B)—Medical Services—Per Calendar Year**

\*Once you have been billed \$[183] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

Services	Medicare Pays	Plan Pays	You Pay
<b>Medical Expenses</b> —In or Out of the Hospital and Outpatient Hospital Treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,  First \$[183] of Medicare Approved Amounts*	\$0	\$0	\$[183] (Part B Deductible)
Remainder of Medicare Approved Amounts	Generally, 80%	Generally, 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare Approved Amounts)	\$0	\$0	All Costs
<b>Blood</b>  First 3 pints	\$0	All Costs	\$0
Next \$[183] of Medicare Approved Amounts*	\$0	\$0	\$[183] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0
<b>Clinical Laboratory Services</b> —Tests for Diagnostic Services	100%	\$0	\$0

**Plan A  
Parts A and B**

<b>Home Health Care</b> Medicare Approved Services --Medically necessary skilled care services and medical supplies --Durable medical equipment First \$[183] of Medicare Approved Amounts*	100%	\$0	\$0
Remainder of Medicare Approved Amounts	80%	20%	\$0

**Plan B**

**Medicare (Part A)—Hospital Services—Per Benefit Period**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

Services	Medicare Pays	Plan Pays	You Pay
<b>Hospitalization*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies  First 60 days	All but \$[1340]	\$[1340] (Part A Deductible)	\$0
61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
91st day and after:	All but \$[670] a day	\$[670] a day	\$0
--While using 60 lifetime reserve days			
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0**
--Beyond the additional 365 days	\$0	\$0	All Costs
<b>Skilled Nursing Facility Care*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital  First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[167.50] a day	\$0	Up to \$ [167.50] a day
101st day and after	\$0	\$0	All costs

Services	Medicare Pays	Plan Pays	You Pay
<b>Blood</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>Hospice Care</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness	All but very limited copayment/coinsurance for outpatient drugs and inpatient respite care	Medicare Copayment /coinsurance	\$0

**\*\*NOTE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**Plan B**  
**Medicare (Part B)—Medical Services—Per Calendar Year**

\*Once you have been billed \$[183] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

Services	Medicare Pays	Plan Pays	You Pay
<b>Medical Expenses</b> —In or Out of the Hospital and Outpatient Hospital Treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
First \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B Deductible) \$0
Remainder of Medicare- Approved Amounts	Generally, 80%	Generally, 20%	
<b>Part B Excess Charges</b> (Above Medicare Approved Amounts)	\$0	\$0	All Costs
<b>Blood</b>			
First 3 pints	\$0	All Costs	\$0
Next \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B Deductible)
Remainder of Medicare-Approved Amounts	80%	20%	\$0
<b>Clinical Laboratory Services--</b> Tests for Diagnostic Services	100%	\$0	\$0

**Plan B**  
**Parts A and B**

<b>Home Health Care</b> Medicare Approved Services --Medically necessary skilled care services and medical supplies --Durable medical equipment	100%	\$0	\$0
First \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B Deductible)
Remainder of Medicare-Approved Amounts	80%	20%	\$0

**Plan C**  
**Medicare (Part A)—Hospital Services—Per Benefit Period**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

Services	Medicare Pays	Plan Pays	You Pay
<b>Hospitalization*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[1340]	\$[1340] (Part A Deductible)	\$0
61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
91st day and after:	All but \$[670] a day	\$[670] a day	\$0
--While using 60 lifetime reserve days --Once lifetime reserve days are used: Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0**
Beyond the additional 365 days	\$0	\$0	All Costs
<b>Skilled Nursing Facility Care*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[167.50] a day	Up to \$[167.50] a day	\$0
101st day and after	\$0	\$0	All costs
<b>Blood</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>Hospice Care</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness.	All but very limited co-payment/coinsurance for out-patient drugs and inpatient respite Care	Medicare co-payment/coinsurance	\$0

\*\*NOTE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**Plan C**  
**Medicare (Part B)—Medical Services—Per Calendar Year**

\*Once you have been billed \$[183] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

Services	Medicare Pays	Plan Pays	You Pay
<b>Medical Expenses</b> —In or Out of the Hospital and Outpatient Hospital Treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$[183] of Medicare-Approved Amounts*	\$0	\$[183] (Part B Deductible)	\$0
Remainder of Medicare-Approved Amounts	Generally, 80%	Generally, 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare Approved Amounts)	\$0	\$0	All Costs
<b>Blood</b>			
First 3 pints	\$0	All Costs	\$0
Next \$[183] of Medicare-Approved Amounts*	\$0	\$[183] (Part B Deductible)	\$0
Remainder of Medicare-Approved Amounts	80%	20%	\$0
<b>Clinical Laboratory Services</b> — Tests for Diagnostic Services	100%	\$0	\$0



**Plan C**  
**Parts A and B**

<b>Home Health Care</b> Medicare Approved Services			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment			
First \$[183] of Medicare-Approved Amounts*	\$0	\$[183] (Part B Deductible)	\$0
Remainder of Medicare-Approved Amounts	80%	20%	\$0

**Plan C**  
**Other Benefits—Not Covered by Medicare**

<b>Foreign Travel—Not Covered By Medicare</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

**Plan D**  
**Medicare (Part A)—Hospital Services—Per Benefit Period**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

Services	Medicare Pays	Plan Pays	You Pay
<b>Hospitalization*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[1340]	\$[1340] (Part A Deductible)	\$0
61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
91st day and after:	All but \$[670] a day	\$[670] a day	\$0
--While using 60 lifetime reserve days			\$0
--Once lifetime reserve days are used:			
---Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0**
---Beyond the additional 365 days	\$0	\$0	All Costs
<b>Skilled Nursing Facility Care*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[167.50] a day	Up to \$[167.50] a day	\$0
101st day and after	\$0	\$0	All costs
<b>Blood</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0

Services	Medicare Pays	Plan Pays	You Pay
<b>Hospice Care</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness.	All but very limited co-payment/coinsurance for out-patient drugs and inpatient respite care	Medicare copayment/coinsurance	\$0

**\*\*NOTE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

#### Plan D

##### Medicare (Part B)—Medical Services—Per Calendar Year

\*Once you have been billed \$[183] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

Services	Medicare Pays	Plan Pays	You Pay
<b>Medical Expenses</b> —In or Out of the Hospital and Outpatient Hospital Treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,  First \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B Deductible)
Remainder of Medicare-Approved Amounts	Generally, 80%	Generally, 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare Approved Amounts)	\$0	\$0	All Costs
<b>Blood</b>  First 3 pints	\$0	All Costs	\$0
Next \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B Deductible)
Remainder of Medicare-Approved Amounts	80%	20%	\$0
<b>Clinical Laboratory Services</b> — Tests For Diagnostic Services	100%	\$0	\$0

#### Plan D (continued) Parts A and B

Services	Medicare Pays	Plan Pays	You Pay
<b>Home Health Care</b> Medicare Approved Services  --Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment  First \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B Deductible)
Remainder of Medicare-Approved Amounts	80%	20%	\$0

#### Plan D

##### Other Benefits—Not Covered by Medicare

<b>Foreign Travel—Not Covered by Medicare</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

**Plan F or High Deductible Plan F**  
**Medicare (Part A)—Hospital Services—Per Benefit Period**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

[\*\*This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year [\$2240] deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are [\$2240]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]

Services	Medicare Pays	[After You Pay [\$2240] Deductible,** Plan Pays]	[In Addition to [\$2240] Deductible,** You Pay]
<b>Hospitalization*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[1340]	\$[1340] (Part A Deductible)	\$0
61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
91st day and after:	All but \$[670] a day	\$[670] a day	\$0
--While using 60 lifetime reserve days --Once lifetime reserve days are used:			
Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0
Beyond the additional 365 days	\$0	\$0	All Costs
<b>Skilled Nursing Facility Care*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[167.50] a day	Up to \$[167.50] a day	\$0
101st day and after	\$0	\$0	All costs
<b>Blood</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>Hospice Care</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness.	All but very limited co-payment/coinsurance for out-patient drugs and inpatient respite care	Medicare co-payment/coinsurance	\$0

\*\*\*NOTE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance on any difference between its billed charges and the amount Medicare would have paid.

**Plan F or High Deductible Plan F (Continued)**  
**Medicare (Part B)—Medical Services—Per Calendar Year**

\*Once you have been billed \$[183] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

[\*\*This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year [\$2240] deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are [\$2240]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]

Services	Medicare Pays	[After You Pay \$2240 Deductible,** Plan Pays]	[In Addition to \$2240 Deductible,** You Pay]
<b>Medical Expenses</b> —In or Out of the Hospital and Outpatient Hospital Treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$[183] of Medicare-Approved Amounts*	\$0	\$[183] (Part B Deductible)	\$0
Remainder of Medicare Approved Amounts	Generally, 80%	Generally, 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare Approved Amounts)	\$0	100%	\$0

<b>Blood</b>			
First 3 pints	\$0	All Costs	\$0
Next \$[183] of Medicare-Approved Amounts*	\$0	\$[183] (Part B Deductible)	\$0
Remainder of Medicare-Approved Amounts	80%	20%	\$0
<b>Clinical Laboratory Services—</b>			
Tests For Diagnostic Services	100%	\$0	\$0

**Plan F or High Deductible Plan F  
Parts A and B**

Services	Medicare Pays	After You Pay \$2240 Deductible,** Plan Pays	In Addition to \$2240 Deductible,** You Pay
<b>Home Health Care</b> Medicare Approved Services			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment			
First \$[183] of Medicare-Approved Amounts*	\$0	\$[183] (Part B Deductible)	\$0
Remainder of Medicare-Approved Amounts	80%	20%	\$0

**Plan F or High Deductible Plan F (Continued)  
Other Benefits—Not Covered by Medicare**

Services	Medicare Pays	After You Pay \$2240 Deductible,** Plan Pays	In Addition to \$2240 Deductible,** You Pay
<b>Foreign Travel—Not Covered by Medicare</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

**Plan G or High Deductible Plan G  
Medicare (Part A)—Hospital Services—Per Benefit Period**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

[\*\*This high deductible plan pays the same benefits as Plan G after you have paid a calendar year [\$2240] deductible. Benefits from the high deductible Plan G will not begin until out-of-pocket expenses are [\$2240]. Out-of-pocket expenses for this deductible include expenses for the Medicare Part B deductible, and expenses that would ordinarily be paid by the policy. This does not include the plan's separate foreign travel emergency deductible.]

Services	Medicare Pays	Plan Pays	You Pay
<b>Hospitalization*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[1340]	\$[1340] (Part A Deductible)	\$0
61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
91st day and after:	All but \$[670] a day	\$ [670] a day	\$0
--While using 60 lifetime reserve days			
--Once lifetime reserve days are used:			
Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0
Beyond the additional 365 days	\$0	\$0	All Costs

Services	Medicare Pays	Plan Pays	You Pay
<b>Skilled Nursing Facility Care*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[167.50] a day	Up to \$[167.50] a day	\$0
101st day and after	\$0	\$0	All costs
<b>Blood</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>Hospice Care</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness.	All but very limited copayment/coinsurance for out-patient drugs and inpatient respite care	Medicare co-payment/coinsurance	\$0

\*\*NOTE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**Plan G or High Deductible Plan G**  
**Medicare (Part B)—Medical Services—Per Calendar Year**

\*Once you have been billed \$[183] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

[\*\*This high deductible plan pays the same benefits as Plan G after you have paid a calendar year [\$2240] deductible. Benefits from the high deductible Plan G will not begin until out-of-pocket expenses are [\$2240]. Out-of-pocket expenses for this deductible include expenses for the Medicare Part B deductible, and expenses that would ordinarily be paid by the policy. This does not include the plan's separate foreign travel emergency deductible.]

Services	Medicare Pays	After you Pay \$[2240] Deductibles, ** Plan Pays	In Addition to \$[2240] Deductible, ** You Pay
<b>Medical Expenses</b> —In or Out of the Hospital and Outpatient Hospital Treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[183] of Medicare-Approved Amounts* Remainder of Medicare-Approved Amounts	\$0 Generally, 80%	\$0 Generally, 20%	\$[183] (Unless Part B Deductible has been met)] \$0
<b>Part B Excess Charges</b> (Above Medicare Approved Amounts)	\$0	100%	\$0
<b>Blood</b> First 3 pints Next \$[183] of Medicare-Approved Amounts* Remainder of Medicare-Approved Amounts	\$0 \$0 80%	All Costs \$0 20%	\$0 \$[183] (Unless Part B Deductible has been met) \$0
<b>Clinical Laboratory Services</b> —Tests For Diagnostic Services	100%	\$0	\$0

**Plan G or High Deductible Plan G  
Parts A and B**

Services	Medicare Pays	Plan Pays	You Pay
<b>Home Health Care</b> Medicare Approved Services --Medically necessary skilled care services and medical supplies --Durable medical equipment	100%	\$0	\$0
First \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Unless Part B Deductible has been met)
Remainder of Medicare-Approved Amounts	80%	20%	\$0

**Other Benefits—Not Covered by Medicare**

<b>Foreign Travel—Not Covered by Medicare</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

**Plan K**

\*You will pay half the cost-sharing of some covered services until you reach the annual out-of-pocket limit of \$[5240] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare co-payment and coinsurance for the rest of the calendar year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.

**Medicare (Part A)—Hospital Services—Per Benefit Period**

\*\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

Services	Medicare Pays	Plan Pays	You Pay*
<b>Hospitalization**</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[1340]	\$[670] (50% of Part A deductible)	\$[670] (50% of Part A deductible)♦
61st thru 90th day	All but \$[335] a day	\$ [335] a day	\$0
91st day and after:	All but \$[670] a day	\$ [670] a day	\$0
--While using 60 lifetime reserve days			
--Once lifetime reserve days are used:	\$0	100% of Medicare eligible expenses	\$0***
--Additional 365 days	\$0	\$0	All costs
--Beyond the additional 365 days			
<b>Skilled Nursing Facility Care**</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days			
21st thru 100th day			
101st day and after	All approved amounts	\$0	\$0
	All but \$[167.50] a day	Up to \$[83.75] a day (50% of Part A Coinsurance)	Up to \$[83.75] a day (50% of Part A Coinsurance) ♦
	\$0	\$0	All costs
<b>Blood</b>			
First 3 pints	\$0	50%	50%♦
Additional amounts	100%	\$0	\$0
<b>Hospice Care</b>			
	All but very limited		

Services	Medicare Pays	Plan Pays	You Pay*
You must meet Medicare's requirements, including a doctor's certification of terminal illness.	copayment/coinsurance for outpatient drugs and inpatient respite care	50% of co-payment/coinsurance	50% of Medicare co-payment/coinsurance ♦

\*\*\*NOTE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

#### Plan K

##### Medicare (Part B)—Medical Services—Per Calendar Year

\*\*\*\*Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

Services	Medicare Pays	Plan Pays	You Pay*
<b>Medical Expenses</b> —In or Out of the Hospital and Outpatient Hospital Treatment, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,  First \$[183] of Medicare Approved Amounts****  Preventive Benefits for Medicare covered services  Remainder of Medicare Approved Amounts	  \$0  Generally 80% or more of Medicare approved amounts  Generally 80%	  \$0  Remainder of Medicare approved amounts  Generally 10%	  \$[183] (Part B deductible)**** ♦  All costs above Medicare approved amounts  Generally 10% ♦
<b>Part B Excess Charges</b> (Above Medicare Approved Amounts)	\$0	\$0	All costs (and they do not count toward annual out-of-pocket limit of \$[5240])*
<b>Blood</b>  First 3 pints  Next \$[183] of Medicare Approved Amounts****  Remainder of Medicare Approved Amounts	  \$0  \$0  Generally 80%	  50%  \$0  Generally 10%	  50%♦  \$[183] (Part B deductible)**** ♦  Generally 10% ♦
<b>Clinical Laboratory Services</b> — Tests For Diagnostic Services	100%	\$0	\$0

\*This plan limits your annual out-of-pocket payments for Medicare-approved amounts to \$ [5240] per year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.

#### Plan K Parts A and B

Services	Medicare Pays	Plan Pays	You Pay*
<b>Home Health Care</b> Medicare Approved Services  --Medically necessary skilled care services and medical supplies  --Durable medical equipment  First \$[183] of Medicare Approved Amounts*****  Remainder of Medicare Approved Amounts	  100%    \$0  80%	  \$0    \$0  10%	  \$0    \$[183] (Part B deductible) ♦  10%♦

\*\*\*\*\*Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

#### Plan L

\*You will pay one-fourth of the cost-sharing of some covered services until you reach the annual out-of-pocket limit of \$[2620] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare co-payment and coinsurance for the rest of the calendar year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.

**Medicare (Part A)—Hospital Services—Per Benefit Period**

\*\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

Services	Medicare Pays	Plan Pays	You Pay*
<b>Hospitalization**</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[1340]	\$[1005] (75% of of Part A deductible)	\$[335] (25% of Part A deductible)♦
61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
91st day and after:			
--While using 60 lifetime reserve days	All but \$[670] a day	\$[670] a day	\$0
--Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare eligible expenses	\$0***
--Beyond the additional 365 days	\$0	\$0	All costs
<b>Skilled Nursing Facility Care**</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[167.50] a day	Up to \$[125.63] a day (75% of Part A Coinsurance)	Up to \$[41.8] a day (25% of Part A Coinsurance) ♦
101st day and after	\$0	\$0	All costs
<b>Blood</b>			
First 3 pints	\$0	75%	25%♦
Additional amounts	100%	\$0	\$0
<b>Hospice Care</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness.	All but very limited copayment/coinsurance for outpatient drugs and inpatient respite care	75% of co-payment/coinsurance	25% of co-payment/coinsurance♦

\*\*\*NOTE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**Plan L**

**Medicare (Part B)—Medical Services—Per Calendar Year**

\*\*\*\*Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

Services	Medicare Pays	Plan Pays	You Pay*
<b>Medical Expenses</b> —In or Out of the Hospital and Outpatient Hospital Treatment, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First \$[183] of Medicare Approved Amounts****			
Preventive Benefits for Medicare covered services	\$0	\$0	\$[183] (Part B deductible)**** ♦
Remainder of Medicare Approved Amounts	Generally 80% or more of Medicare approved amounts  Generally 80%	Remainder of Medicare approved amounts  Generally 15%	All costs above Medicare approved amounts  Generally 5% ♦
<b>Part B Excess Charges</b> (Above Medicare Approved Amounts)	\$0	\$0	All costs (and they do not count toward annual out-of-pocket limit of \$[2620])*



<b>Blood</b>			
First 3 pints	\$0	75%	25%♦
Next \$[183] of Medicare Approved Amounts****	\$0	\$0	\$[183] (Part B deductible) ♦
Remainder of Medicare Approved Amounts	Generally 80%	Generally 15%	Generally 5%♦
<b>Clinical Laboratory Services—</b> Tests For Diagnostic Services	100%	\$0	\$0

\*This plan limits your annual out-of-pocket payments for Medicare-approved amounts to \$[2620] per year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.

**Plan L**  
**Parts A and B**

Services	Medicare Pays	Plan Pays	You Pay*
<b>Home Health Care</b> Medicare Approved Services			
--Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--Durable medical equipment First \$[183] of Medicare Approved Amounts*****	\$0	\$0	\$[183] (Part B deductible) ♦ 5% ♦
Remainder of Medicare Approved Amounts	80%	15%	

\*\*\*\*\*Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

**Plan M**  
**Medicare (Part A)—Hospital Services—Per Benefit Period**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

Services	Medicare Pays	Plan Pays	You Pay
<b>Hospitalization*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days			
61st thru 90th day	All but \$[1340]	\$[670] (50% of Part A deductible)	\$[670] (50% of Part A deductible)
91st day and after:	All but \$[335] a day	\$[335] a day	\$0
--While using 60 lifetime reserve days	All but \$[670] a day	\$[670] a day	\$0
Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0**
--Beyond the additional 365 days	\$0	\$0	All Costs
<b>Skilled Nursing Facility Care*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days			
21st thru 100th day	All approved amounts	\$0	\$0
101st day and after	All but \$[167.50] a day	Up to \$[167.50] a day	\$0
	\$0	\$0	All costs
<b>Blood</b> First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>Hospice care</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness.	All but very limited co-payment/coinsurance for outpatient drugs and inpatient respite care	Medicare co-payment/coinsurance	\$0

\*\*NOTE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time, the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**Plan M**

**Medicare (Part B)—Medical Services—Per Calendar Year**

\*Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

Services	Medicare Pays	Plan Pays	You Pay
<b>Medical Expenses</b> —In or Out of the Hospital and Outpatient Hospital Treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
First \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B deductible)
Remainder of Medicare Approved Amounts	Generally 80%	Generally 20%	\$0
<b>Part B Excess Charges</b> (Above Medicare-Approved Amounts)	\$0	\$0	All Costs
<b>Blood</b>			
<b>First 3 pints</b>	\$0	All Costs	\$0
<b>Next \$[183] of Medicare-Approved Amounts*</b>	\$0	\$0	\$ [183] (Part B deductible)
<b>Remainder of Medicare-Approved Amounts</b>	80%	20%	\$0
<b>Clinical Laboratory Services</b> —Tests For Diagnostic Services	100%	\$0	\$0

**Parts A and B**

Services	Medicare Pays	Plan Pays	You Pay
<b>Home Health Care</b> Medicare Approved Services			
Medically necessary skilled care services and medical supplies	100%	\$0	\$0
---Durable medical equipment			
---First \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B deductible)
---Remainder of Medicare Approved Amounts	80%	20%	\$0

**Other Benefits—Not Covered by Medicare**

<b>Foreign Travel--Not Covered by Medicare</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

**Plan N**

**Medicare (Part A)—Hospital Services—Per Benefit Period**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

Services	Medicare Pays	Plan Pays	You Pay
<b>Hospitalization*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but \$[1340]	\$[1340] (Part A deductible)	\$0
61st thru 90th day	All but \$[335] a day	\$[335] a day	\$0
91st day and after:	All but \$[670] a day		
--While using 60 lifetime reserve days		\$[670] a day	\$0
Once lifetime reserve days are used:			
--Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0**
--Beyond the additional 365 days	\$0	\$0	All Costs

Services	Medicare Pays	Plan Pays	You Pay
<b>Skilled Nursing Facility Care*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but \$[167.50] a day	Up to \$ [167.50] a day	\$0
101st day and after	\$0	\$0	All costs
<b>Blood</b> First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>Hospice Care</b> You must meet Medicare's requirements, including a doctor's certification of terminal illness.	All but very limited co-payment/coinsurance for outpatient drugs and inpatient respite care	Medicare co-payment/coinsurance	\$0

**\*\*NOTE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time, the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

#### Plan N (continued)

#### Medicare (Part B)—Medical Services—Per Calendar Year

\*Once you have been billed \$[183] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

Services	Medicare Pays	Plan Pays	You Pay
<b>Medical Expenses</b> —In or Out of the Hospital and Outpatient Hospital Treatment, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment			
First \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B deductible)
Remainder of Medicare-Approved Amounts	Generally 80%	Balance, other than up to \$20 per office visit and up to \$50 per emergency room visit. The co-payment of up to \$50 is waived if the insured is admitted to any hospital and the emergency visit is covered as a Medicare Part A expense.	Up to \$20 per office visit and up to \$50 per emergency room visit. The co-payment of up to \$50 is waived if the insured is admitted to any hospital and the emergency visit is covered as a Medicare Part A expense.
<b>Part B Excess Charges</b> (Above Medicare Approved Amounts)	\$0	\$0	All Costs
<b>Blood</b> First 3 pints	\$0	All Costs	\$0
Next \$[183] of Medicare-Approved Amounts*	\$0	\$0	\$[183] (Part B deductible)
Remainder of Medicare-Approved Amounts	80%	20%	\$0
<b>Clinical Laboratory Services</b> —Tests for Diagnostic Services	100%	\$0	\$0

#### Parts A and B

Services	Medicare Pays	Plan Pays	You Pay
<b>Home Health Care</b> Medicare Approved Services Medically necessary skilled care services and medical supplies Durable medical equipment -First \$[183] of Medicare-Approved Amounts* -Remainder of Medicare-Approved Amounts	100%   \$0 80%	\$0  \$0 20%	\$0 \$[183] (Part B deductible) \$0

**Plan N (continued)**  
**Other Benefits—Not Covered by Medicare**

<b>Foreign Travel – Not Covered By Medicare</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1111 (re-designated from LSA-R.S. 22:224 pursuant to Acts 2008, No. 415, effective, January 1, 2009) and 42 U.S.C. 1395 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1114 (June 1999), repromulgated LR 25:1495 (August 1999), amended LR 29:2449 (November 2003), LR 31:2918 (November 2005), LR 35:1121 (June 2009), LR 35:1121 (June 2009), amended LR 44:

**§596. Appendix A—Calculation Forms**

**MEDICARE SUPPLEMENT REFUND CALCULATION  
FORM FOR CALENDAR YEAR \_\_\_\_\_**

Type<sup>1</sup> \_\_\_\_\_ SMSBP<sup>2</sup> \_\_\_\_\_  
For the State of \_\_\_\_\_ Company Name \_\_\_\_\_  
NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
Address \_\_\_\_\_ Person Completing Exhibit \_\_\_\_\_  
Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

LINE		(a) Earned Premium <sup>3</sup>	(b) Incurred Claims <sup>4</sup>
1.	Current Year's Experience		
	a. Total (all policy years)		
	b. Current year's issues <sup>5</sup>		
	c. Net (for reporting purposes = 1a-1b)		
2.	Past Year's Experience (all policy years)		
3.	Total Experience (Net Current Year + Past Year)		
4.	Refunds Last Year (Excluding Interest)		
5.	Previous Since Inception (Excluding Interest)		
6.	Refunds Since Inception (Excluding Interest)		
7.	Benchmark Ratio Since Inception (see worksheet for Ratio 1)		
	Experienced Ratio Since Inception (Ratio 2)		
8.	Total Actual Incurred Claims (line 3, col. b) Total Earned Prem. (line 3, col. a)-Refunds Since Inception (line 6)		
9.	Life Years Exposed Since Inception If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.		
10.	Tolerance Permitted (obtained from credibility table)		

### Medicare Supplement Credibility Table

Life Years Exposed	
Since Inception	Tolerance
10,000+	0.0%
5,000 – 9,999	5.0%
2,500 – 4,999	7.5%
1,000 – 2,499	10.0%
500 - 999	15.0%
If less than 500, no credibility.	

1. Individual, Group, Individual Medicare Select, or Group Medicare Select Only.
2. "SMSBP" = Standardized Medicare Supplement Benefit Plan—Use "P" for pre-standardized plans.
3. Includes Modal Loadings and Fees Charged
4. Excludes Active Life Reserves
5. This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratio"

### MEDICARE SUPPLEMENT REFUND CALCULATION FORM FOR CALENDAR YEAR

Type<sup>1</sup> \_\_\_\_\_ SMSBP<sup>2</sup> \_\_\_\_\_  
 For the State of \_\_\_\_\_ Company Name \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
 Address \_\_\_\_\_  
 Person Completing Exhibit \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

11	Adjustment to Incurred Claims for Credibility Ratio 3 = Ratio 2 + Tolerance	
----	--	--

If Ratio 3 is more than Benchmark Ratio (Ratio 1), a refund or credit to premium is not required.

If Ratio 3 is less than the Benchmark Ratio, then proceed.

12.	Adjusted Incurred Claims (Total Earned Premiums (Line 3, col. a) - Refund Since Inception (line 6)) x Ratio 3 (line 11)	
13.	Refund = Total Earned Premiums (line 3, col. a) - Refunds Since Inception (line 6) - [Adjusted Incurred Claims (line 12) / Benchmark Ratio (Ratio 1)]	

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, a description of the refund or credit against premiums to be used must be attached to this form.

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

Signature \_\_\_\_\_

Name—Please Type \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

### REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES FOR CALENDAR YEAR \_\_\_\_\_

Type<sup>1</sup> \_\_\_\_\_ SMSBP<sup>2</sup> \_\_\_\_\_  
 For the State of \_\_\_\_\_ Company Name \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
 Address \_\_\_\_\_ Person Completing Exhibit \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

(a) <sup>3</sup>	(b) <sup>4</sup>	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o) <sup>5</sup>
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss	(d)x(e)	Factor	(b)x(g)	Cumulative Loss	(h)x(i)	Policy Year Loss
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15 <sup>6</sup>		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l + n)/(k + m): \_\_\_\_\_

<sup>1</sup>Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

<sup>2</sup>"SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans

<sup>3</sup>Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

<sup>4</sup>For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

<sup>5</sup>These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

<sup>6</sup>To include the earned premium for all years prior to as well as the 15th year prior to the current year.

**REPORTING FORM FOR THE CALCULATION OF BENCHMARK  
RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES  
FOR CALENDAR YEAR \_\_\_\_\_**

Type<sup>1</sup> \_\_\_\_\_ SMSBP<sup>2</sup> \_\_\_\_\_  
 For the State of \_\_\_\_\_ Company Name \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company Code \_\_\_\_\_  
 Address \_\_\_\_\_ Person Completing Exhibit \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone Number \_\_\_\_\_

(a) <sup>3</sup>	(b) <sup>4</sup>	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o) <sup>5</sup>
Year	Earned Premium	Factor	(b)x(c)	Cumulative Loss	(d)x(e)	Factor	(b)x(g)	Cumulative Loss	(h)x(i)	Policy Year Loss
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15+ <sup>6</sup>		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l + n)/(k + m): \_\_\_\_\_

<sup>1</sup>Individual, Group, Individual Medicare Select, or Group Medicare Select Only.

<sup>2</sup>"SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans

<sup>3</sup>Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

<sup>4</sup>For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

<sup>5</sup>These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

<sup>6</sup>To include the earned premium for all years prior to as well as the 15th year prior to the current year.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:224 and 42 U.S.C. 1395 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1132 (June 1999), repromulgated LR 25:1513 (August 1999), LR 29:2478 (November 2003), amended LR 31:2941 (November 2005), amended LR 44:

**§599. Effective Date**

A. This regulation shall become effective upon final publication in the *Louisiana Register*.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 22:1111 (re-designated from LSA-R.S. 22:224 pursuant to Acts 2008, No. 415, effective January 1, 2009) and 42 U.S.C. 1395 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1142 (June 1999), repromulgated LR 25:1522 (August 1999), amended LR 29:2497 (November 2003), LR 31:2948 (November 2005), LR 35:1136 (June 2009), amended LR 44:

**Family Impact Statement**

1. Describe the effect of the proposed regulation on the stability of the family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

**Poverty Impact Statement**

1. Describe the effect on household income, assets, and financial security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

#### **Small Business Analysis**

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

#### **Provider Impact Statement**

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed amended regulation will have no effect.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed amended regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed amended regulation will have no effect.

#### **Public Comments**

Interested persons may submit written comments on the amended promulgation of Regulation 33. Such comments must be received no later than October 20, 2018 by close of business, 4:30 p.m., and addressed to Claire Lemoine, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214 or faxed to (225) 342-1632.

James J. Donelon  
Commissioner

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Medicare Supplemental Insurance Minimum Standards**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule changes will not result in any additional expenditures or savings for state or local governmental units.

The proposed rule changes align the administrative rules with the latest federal guidelines related to Medicare supplement insurance plans (Medigap Policies). The Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), which was signed into law on April 16, 2015, prohibits the sale of Medigap policies that cover Part B deductibles to Medicare beneficiaries attaining eligibility on or after January 1, 2020. Furthermore, the proposed rule changes align deductibles, copay amounts, coinsurance rates, and out-of-pocket limits for Medicare and Medigap plans with current rates for 2018.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule changes will not affect revenue collections for state or local governmental units.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rules may affect individuals who are "newly eligible" as defined as those individuals who: (a) have attained age 65 on or after January 1, 2020; or (b) first become eligible for Medicare due to age, disability or end-stage renal disease, on or after January 1, 2020. These individuals will not have the option to purchase Medigap policies that cover Part B deductibles. For reference, Medicare Part B covers services such as outpatient care, preventative care and services, ambulance services, and durable medical equipment. Medigap policies will still be available to these individuals that cover coinsurance and copays.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rules will not affect competition or employment.

Lance Herrin  
Assistant Commissioner  
1809#046

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

#### **NOTICE OF INTENT**

#### **Department of Insurance Office of the Commissioner**

Regulation 111—Consent to Rate  
(LAC 37:XIII.Chapter 159)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and through the authority granted under R.S. 22:1 et seq., and specifically R.S. 22:11, R.S. 22:1464, and R.S. 22:1473, the Department of Insurance hereby gives notice of its intent to promulgate Regulation 111 to implement the provisions of R.S. 22:1464, which permits an

insurer, under certain circumstances and pursuant to certain requirements, to impose upon an insured a rate in excess of its filed and approved rates for a specific risk on a consent to rate basis and authorizes the Commissioner of Insurance to promulgate rules and/or regulations as he deems necessary to implement the provisions of Title 22.

#### **Title 37**

### **INSURANCE**

#### **Part XIII. Regulations**

### **Chapter 159. Regulation Number 111—Consent to Rate**

#### **§15901. Purpose**

A. Regulation 111 implements the provisions of R.S. 22:1464.E, which authorizes the commissioner to approve an application by an insurer to impose upon an insured a rate in excess of the insurer's filed and previously approved rates for a specific risk, provided the insurer complies with certain obligations and provides certain information and documentation to the commissioner in order for the commissioner to approve the consent to rate application.

B. The purpose of Regulation 111 is:

1. to regulate the activities of insurers by setting forth the process for the filing and review of a consent to rate application and specifying the information and documentation that must accompany such application; and

2. to protect the interests of insureds who are the subject of a consent to rate request from an insurer by delineating the nature and type of information and documentation that an insured shall receive from the insurer in order for the insured to make an informed decision as to whether it is in the insured's best interest to consent to such excess rate, and to reduce or eliminate the use of misleading or confusing information when an insurer requests that the insured consent to a rate in excess of the rate otherwise filed and approved for use.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1464, R.S. 22:1473, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

#### **§15903. Applicability and Scope**

A. Regulation 111 shall apply to any consent to rate application made by any insurer for any property and casualty insurance policy written or issued for delivery in Louisiana, or for any risk located in Louisiana, in which the insurer seeks to obtain the approval of the commissioner to charge a rate in excess of the rate provided in a filing otherwise applicable. Regulation 111 does not apply to individually rated excess insurance coverages as specified in R.S. 22:1464.A(1).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1464, R.S. 22:1473, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

#### **§15905. Authority**

A. Regulation 111 is promulgated by the commissioner pursuant to the authority granted under the Louisiana Insurance Code, R.S. 22:1 et seq., specifically R.S. 22:11 and R.S. 22:1473.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1464, R.S. 22:1473, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

#### **§15907. Definitions**

A. For the purposes of Regulation 111, the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise.

*Commissioner*—the Louisiana Commissioner of Insurance.

*Consent to Rate*—an agreement between the insured and the insurer based on information provided by the insurer that insurance coverage will be provided for a specific risk at an excess rate, as defined herein.

*Department*—the Louisiana Department of Insurance.

*Excess Rate*—a rate that is more than the manual rate that the commissioner has previously approved for the insurance program. For the purposes of Regulation 111, "rate in excess" has the same meaning as "excess rate".

*Insurance Program*—every manual, minimum, class rate, rating schedule, or rating plan and every other rating rule and every modification of any of the foregoing which an insurer proposes to use in the calculation of a premium to be charged for a policy.

*Insurer*—an insurer with a certificate of authority or license issued under provisions of the Louisiana Insurance Code.

*Manual Rate*—an approved rate for an insurance program.

*Policy*—an insurance contract providing property and casualty insurance coverage for a Louisiana insured or for property located in Louisiana.

*Premium*—all sums charged, received, or deposited as consideration for the purchase or continuation of insurance for a definitely stated term, and shall include any assessment, membership, policy, survey, inspection, service or similar fee or charge made by an insurer as a part of the consideration for the purchase or continuance of insurance, as defined in R.S. 22:46(13).

*Rate*—that cost of insurance per exposure unit, whether expressed as a single number or as a prospective loss cost, with an adjustment to account for the treatment of loss adjustment expenses, expenses, profit, and variation in expected future loss experience, prior to any application of individual risk variations based on actual past loss or expense considerations, and does not include minimum premiums.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1464, R.S. 22:1473, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

#### **§15909. Procedure for Insurer to Use in a Consent to Rate Application**

A. An insurer seeking the approval of the commissioner to charge an insured a rate in excess of the manual rate for property and casualty insurance coverage shall file a consent to rate application with the commissioner no later than 45 calendar days after the effective date of the policy.

B. The consent to rate application made by the insurer shall comply with the requirements of Section 15913 of Regulation 111.

C. The commissioner shall have 45 calendar days to review the consent to rate application, pursuant to R.S. 22:1451.C(1). The 45 day period for review shall commence once the commissioner has received the insurer's complete consent to rate application.



D. Any consent to rate application not received by the commissioner within 45 calendar days of the effective date of the policy shall be disapproved by the commissioner.

E. If a consent to rate application is disapproved by the commissioner, then the insurer shall follow the requirements set forth in §15911 of Regulation 111.

F. If a consent to rate application filed timely is approved by the commissioner, the insurer may proceed to implement the excess rate in accordance with the approved consent to rate application.

G. If the commissioner has not acted on a timely filed consent to rate application and the commissioner has not advised the insurer in writing of any objections with regard to the consent to rate application or that such application is incomplete within 45 days of the commissioner's receipt of same, the insurer may proceed as outlined in R.S. 22:1451.C(2).

H. Renewal of any policy at an excess rate shall require that the insurer submit a new consent to rate application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1464, R.S. 22:1473, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

#### **§15911. Coverage Obligations Imposed on the Insurer upon Disapproval**

A. If an insurer's consent to rate application under Regulation 111 is disapproved for any reason, then the premium charged to the insured shall revert to the approved manual rate for the duration of the policy term, and the insurer shall refund the difference between the excess rate and the approved manual rate to the insured. Coverage shall still be binding on the insured and insurer for the duration of the policy. The insurer shall have 30 days from the date of the commissioner's disapproval of the consent to rate application to refund any monies due to the insured.

B. If an insurer's consent to rate application under Regulation 111 is disapproved for any reason, then the insurer may, within 10 calendar days from the commissioner's disapproval, exercise one of the following options.

1. The insurer may cancel the policy and shall provide the insured with not less than 60 days' written notice of the insurer's intent to cancel the policy.

2. The insurer may enter into a new policy with the insured and submit a new, subsequent consent to rate application. However, if a new, subsequent consent to rate application is submitted, the insurer will be required to utilize the approved manual rate provided in such new, subsequent consent to rate application and will not be able to implement the requested excess rate until such new, subsequent consent to rate application is approved by the commissioner.

3. An insurer may appeal the disapproval of a consent to rate application as set forth in R.S. 22:1451.C(1).

C. After a consent to rate application has been disapproved, if the commissioner approves a new, subsequent consent to rate application, the excess rate so approved shall be implemented on a prospective basis from the date of approval for the duration of the policy term.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1464, R.S. 22:1473, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

#### **§15913. Documentation Required from the Insurer**

A. An insurer seeking the approval of the commissioner pursuant to a consent to rate application for any property and casualty insurance coverage shall file with the commissioner a written application packet, which shall contain the following documentation.

1. The consent to rate application shall set forth the full name of the insurer, the full name and title of the person filing such application on behalf of the insurer, the physical and mailing addresses of the insurer, email address, telephone number, and facsimile number of the insurer.

2. If the consent to rate application is submitted in paper form, a stamped, self-addressed return envelope.

3. An original of the consent to rate application signed by both the insurer and the insured, which must set forth the following information:

- a. name of the insurer;
- b. name of the insured;
- c. the line of business;
- d. if applicable, the sub-line or program under which the policy is being written;
- e. the policy number;
- f. the policy effective dates (the first and last dates on which the policy is effective);
- g. documentation setting forth in detail the calculation of the premium using the manual rates;
- h. documentation setting forth in detail the calculation of the premium using the consent to rate process;
- i. the written explanation that was provided by the insurer to the insured setting forth in detail the reason(s) why the insured did not qualify for the insurer's manual rates and was subjected to the consent to rate process; and
- j. a copy of any other documentation that the insurer provided to the insured.

B. The commissioner may request additional information and/or documentation as he deems necessary. In accordance with R.S. 22:1451.C(2), the commissioner shall make the final determination as to what constitutes a complete application under Regulation 111.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1464, R.S. 22:1473, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

#### **§15915. Severability**

A. If any section or provision of Regulation 111 or the application to any person or circumstance is held to be invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Regulation 111 to any persons or circumstances that can be given effect without the invalid Section or provision or application, and for these purposes the Sections and provisions of Regulation 111 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1464, R.S. 22:1473, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

#### **§15917. Effective Date**

A. Regulation 111 shall become effective on January 1, 2019.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1464, R.S. 22:1473, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

#### **Family Impact Statement**

1. Describe the effect of the proposed regulation on the stability of the family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

#### **Poverty Impact Statement**

1. Describe the effect on household income, assets, and financial security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

#### **Small Business Analysis**

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

#### **Provider Impact Statement**

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed amended regulation will have no effect.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed amended regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed amended regulation will have no effect.

#### **Public Comments**

Interested persons may submit written comments on the proposed Regulation 111 until 5 p.m., October 22, 2018, 2018, to Lisa Henson, Division of Legal Services, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804.

James J. Donelon  
Commissioner

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Regulation 111—Consent to Rate**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rules will not result in additional costs or savings for state or local governmental units. The proposed rules implement the provisions of R.S. 22:1464 which permits an insurer, under certain circumstances, to impose upon an

insured entity a rate in excess of its filed and approved rates for a specific risk with the consent of the insured entity.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules will benefit insured entities by providing specific guidelines for when an insurer files a consent to rate application. Insured entities benefit from the proposed rules, as they enumerate the information required from an insurer during the application process, which will allow the insured entity to make an informed decision as to whether it is in their best interest to consent to a rate in excess due to a specific risk. Furthermore, insured entities will benefit from a reduction or elimination of misleading or confusing information when an insurer requests a consent to rate agreement, as the information insurers must provide in this situation is now standardized.

The proposed rules provide for a process for entities seeking insurance policies to potentially obtain coverage they may otherwise be unable to obtain at rates greater than those filed and approved with the LA Dept. of Insurance due to a specific risk. Furthermore, the proposed rules allow for insurers to provide coverage on existing policies of insured entities for risks outside of their usual scope.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will not affect competition or employment.

Lance Herrin  
Assistant Commissioner  
1809#021

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Gaming Control Board**

**Reporting of Gaming Positions (LAC 42:III.1701 and 2704)**

The Department of Public Safety and Corrections, Louisiana Gaming Control Board, in accordance with R.S. 27:15, R.S. 27:24, and the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., hereby gives notice that it intends to amend LAC 42:III.1701, Definitions, and create LAC 42:III.2704, Reporting of Gaming Positions. These rule changes clarify practices already required to take place in the industry and create uniformity with the amended statutes and the newly enacted statutes as a result of Acts 469 and 575 of the 2018 Regular Legislative Session.

**Title 42**

**LOUISIANA GAMING**

**Part III. Gaming Control Board**

**Chapter 17. General Provisions**

**§1701. Definitions**

A. - B. ...

\*\*\*

**Designated Gaming Area—**

a. for the licensed eligible facility, the contiguous area of the eligible facility at which slot machine gaming may be conducted in accordance with the Act. Such designated gaming area shall not contain more than 1,632 gaming positions;

b. for the casino operator, those portions of the official gaming establishment in which gaming activities may be conducted. The designated gaming area shall not be less than 100,000 square feet of usable space;

c. for riverboats, that portion or portions of a riverboat in which gaming activities may be conducted. Such designated gaming area shall not exceed 2,365 gaming positions, subject to the rules and regulations of the board. Plans shall be submitted to and approved by the board or division, as applicable.

\*\*\*

**Gaming Position**—a seat at an electronic gaming device or slot machine or a space beside a dice or other table game whereat patrons may game. For electronic gaming devices or slot machines that do not have seats or that have multiple seats, the number of gaming positions shall be determined by the number of persons that may wager during the game. For card tables, one gaming position shall be counted for each betting location indicated on the table layout. For roulette tables, one gaming position shall be counted for the number of different color of non-value table chips used at a table. For craps tables, a half table shall count as eight gaming positions and a full table shall count as sixteen gaming positions. For all other table games, the number of gaming positions shall be determined by the division. In accordance with R.S. 27:65(B)(15), licensees may conduct no more than four tournaments, each no more than 14 days in length, per year in which the gaming positions utilized for tournament play are not considered part of the licensee's total number of gaming positions.

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**Riverboat**—a vessel or facility as defined in the Act where gaming may be conducted.

\*\*\*

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 27:15 and 24.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 38:1601 (July 2012), amended LR 41:1496 (August 2015), amended LR 44:

**Chapter 27. Accounting Regulations  
§2704. Reporting of Gaming Positions**

A. On a quarterly basis, a licensee and casino operator shall provide a report to the division, no later than the 10th day following the reported quarter, containing the number of slot machines and table games along with a total number of gaming positions in its designated gaming area, which shall be certified by its general manager. In accordance with R.S. 27:65(B)(15), licensees may conduct no more than four tournaments, each no more than 14 days in length, per year in which the gaming positions utilized for tournament play are not considered part of the licensee's total number of gaming positions.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 27:15 and 24.

**HISTORICAL NOTE:** Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 44:

**Family Impact Statement**

Pursuant to the provisions of R.S. 49:972, the Gaming Control Board, through its chairman, has considered the potential family impact of the proposed Rule.

It is accordingly concluded that the proposed Rule would appear to have no impact on the following:

1. the effect on stability of the family;

2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the effect on the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

#### **Poverty Impact Statement**

Pursuant to the provisions of R.S. 49:973, the Gaming Control Board, through its chairman, has considered the potential poverty impact of the proposed Rule.

It is accordingly concluded that the proposed Rule would appear to have no impact on the following:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### **Small Business Analysis**

Pursuant to the provisions of R.S. 49:965.5 the Louisiana Gaming Control Board, through its chairman, has concluded that the proposed Rule is not expected to have a significant impact on small business.

#### **Provider Impact Statement**

Pursuant to the provisions of HCR170 of 2014, the Gaming Control Board, through its chairman, has considered the potential provider impact of the proposed Rule.

It is accordingly concluded that the proposed Rule would appear to have no impact on the following:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the costs to the provider to provide the same level of service;
3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments to Earl G. Pitre, Jr., Assistant Attorney General, Louisiana Department of Justice, Gaming Division, 1885 North Third Street, Fifth Floor, Baton Rouge, LA 70802. All comments must be submitted no later than October 10, 2018.

Ronnie Jones  
Chairman

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Reporting of Gaming Positions**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will result in a workload increase for the Gaming Control Board related to additional quarterly reports and new applications from the licensees; however, this additional workload will be absorbed using existing budget authority and resources.

The proposed rule change codifies Acts 469 and 575 of the 2018 Regular Legislative Session by defining the term “gaming

position”, changing the designated gaming area from a maximum square footage to a maximum number of gaming positions, providing rules and regulation for conducting tournaments, and establishing quarterly reporting for the number of gaming positions.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will result in an unknown impact on revenue collections of state and local governmental units. Designated gaming areas in some licensed locations will be allowed to expand the number of devices as the new limitation will focus on a maximum number of gaming positions rather than a maximum square footage. Licensees altering gaming areas may potentially alter consumer behavior, but whether this will expand overall revenue collections of state and local governmental units or shift revenues between localities is unknown.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will result in an unknown impact on costs and economic benefits for licensees. Whether or not eligible licensees will choose to increase the number of gaming positions is unknown, and a change to a designated gaming area may alter consumer behavior. Whether this will result in costs or economic benefits to licensees is unknown. To the degree that the proposed rule change may result in an expansion of gaming activity, economic benefits may increase at the statewide or local level. To the degree that the proposed rule shifts gaming activity, individual locations may realize indeterminable costs or economic benefits. Furthermore, the implementation of the proposed rule change requiring the submission of quarterly reports may result in a slight increase in cost to licensees and the casino operator.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change will result in an unknown impact on competition and employment. Whether or not eligible licensees will choose to increase the number of gaming positions is unknown, and a change to a designated gaming area may alter consumer behavior. To the degree that the proposed rule change may result in an expansion of gaming activity, competition and employment may benefit at the statewide or local level. To the degree that the proposed rule change shifts gaming activity, competition and employment may expand or contract between localities.

Ronnie Jones  
Chairman  
1809#031

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Public Safety and Corrections Gaming Control Board**

Riverboat Economic Development  
(LAC 42:III.110, 2110, 2113, 2117, 2124, and 2910)

The Department of Public Safety and Corrections, Louisiana Gaming Control Board, in accordance with R.S. 27:15, R.S. 27:24, and the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., hereby gives notice that it intends to adopt Chapter 24 of Part III of Title 42 of the Administrative Code and to amend sections 110, 2110, 2113, 2117, 2124, and 2910 of Part III of Title 42 of the Administrative Code. These rule changes clarify practices already required to take place in the industry and creates

uniformity with the amended statutes and the newly enacted statutes as a result of Act 469 of the 2018 Regular Legislative Session.

## **Title 42**

### **LOUISIANA GAMING**

#### **Part III. Gaming Control Board**

##### **Chapter 1. General Provisions**

##### **§110. Quarterly Submissions**

A. - C. ...

D. Riverboat licensees shall submit quarterly reports to the board, the Senate Committee on Judiciary B and the House Committee on the Administration of Criminal Justice in accordance with R.S. 27:46. Each riverboat licensee shall certify to the board that it has timely submitted the required report in accordance with R.S. 27:46. Failure to timely submit the quarterly reports may result in administrative action being taken by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:304 (March 1997), amended LR 30:1703 (August 2004), LR 44:

##### **Chapter 21. Licenses and Permits**

##### **§2110. Plans and Specifications**

A. Riverboat

1. Vessel. The applicant or licensee shall submit all plans and specifications of the vessel and its qualifications to operate a riverboat, including a statement of maritime experience as a riverboat operator, to the board and division. The applicant or licensee shall have an ongoing duty to update the division of changes in the vessel plans, specifying layout and design as they become available. Such changes are subject to prior approval by the board or division.

2. Facility. The applicant or licensee shall submit all plans and specifications of the facility to the board and the division at the time of application. The applicant or licensee shall have an ongoing duty to inform the division of changes in the facility plans, specifying layout and design as they become available. Such changes are subject to prior approval by the board or division.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 38:1610 (July 2012), amended LR 44:

##### **§2113. Licensing Criteria**

A. - F. ...

G. Riverboat Applicants

1. The applicant shall demonstrate a proven ability to operate a vessel of comparable size, capacity, and complexity so as to ensure the safety of its passengers as set forth in these regulations.

2. The applicant shall submit a detailed plan of design of the riverboat.

3. The applicant shall show adequate financial ability to construct and maintain a riverboat.

4. The applicant shall designate the docking facilities to be used by the riverboat.

5. The applicant shall have a good-faith plan to recruit, train, and upgrade minorities in all employment classifications.

6. The applicant shall have a plan to provide the maximum practical opportunities for participation by the broadest number of minority-owned businesses.

H. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 38:1611 (July 2012), amended LR 44:

##### **§2117. Certification Required, Riverboat Only**

A. Before any riverboat may be operated or may continue to operate under the authority of the Act, the applicant or, if the application has been approved, the licensee, shall provide to the division evidence as follows:

1. If operating on a certificated vessel, that the vessel has a valid certificate of inspection from the United States Coast Guard for carriage of passengers on navigable rivers, lakes, and bayous as provided by the Act and for the carriage of a minimum total of 600 passengers and crew; or

2. If operating on a non-certificated vessel as defined in R.S. 27:44, evidence that the riverboat has a valid certificate of compliance issued by the board based on the recommendation of an approved third-party inspector.

a. The sole inspection standard for non-certificated vessels is the guide for alternative inspection of riverboat gaming vessels as adopted and amended by the board.

b. A non-certificated vessel shall be inspected by the third-party inspector annually in accordance with R.S. 27:44.1. Non-compliant items identified by the third-party inspector will be remedied within the time period given. Failure to remedy any discrepancy timely shall be reported to the division by the third-party inspector and may result in sanctions including a civil penalty.

c. A non-certificated vessel shall be inspected quarterly by the licensee. The results of the inspection will be documented and made available to the division.

3. If operating in a facility, that the facility has a valid certificate of compliance as required by R.S. 27:44(24)(e) and 27:44.1(D)(1)(b).

B. The licensee shall submit a copy of all required certificates of compliance to the Senate Committee on Judiciary Section "B" and the House Committee on the Administration of Criminal Justice of the Louisiana Legislature within 25 days of receiving the certificate from the board. The licensee shall provide proof to the board of compliance with this Subsection. Failure to timely submit a certificate of compliance shall result in a civil penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 38:1612 (July 2012), amended LR 40:1380 (July 2014), LR 44:

##### **§2124. Additional Application Information Required, Riverboat Only**

A. Every application for a riverboat license shall contain the following additional information, as applicable:

1. a statement that the vessel has or will obtain a valid certificate of inspection from the United States Coast Guard or valid certificate of compliance from a board-approved third party inspector;

2. if required to cruise and conduct excursions by the Act, the proposed route to be followed identifying the designated waterways; and a description of proposed

excursions including frequency and approximate schedule of excursions, projected passenger load, admission charges, and a proposed berth site;

3. a statement that the facility has or will maintain a certification of compliance in accordance with R.S. 27:44(D)(1)(b).

B. Failure to comply with the provisions of this Section may constitute grounds for delaying consideration or for denial of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 38:1614 (July 2012), amended LR.

## **Chapter 24. Relocation of Gaming Operations**

### **§2401. Relocation of Gaming Operations to a Facility, Procedure**

#### **A. Prior Approval**

1. Prior written approval of the board is required to relocate gaming operations to a facility in accordance with R.S. 27:44(24)(e) and R.S. 27:67.

2. Failure to obtain approval from the board prior to relocating gaming operations to a facility may be grounds for administrative action against a licensee.

#### **B. Application**

1. A licensee desiring to relocate its gaming operations to a facility in accordance with R.S. 27:44(24)(e) and 27:67 shall file an application with the board, which application shall include the following:

a. a petition requesting approval to relocate all or a portion of its gaming operations to a facility as provided for in R.S. 27:44(24)(e) and 27:67;

b. a site plan designating the licensee's current approved berth site and the location of the proposed facility;

c. a legal property description of the land owned or leased by the licensee on which the facility is to be located;

d. a detailed capital improvement and reinvestment plan;

e. a plan for financing the proposed relocation, including any financing commitments;

f. a schedule for the commencement and completion of construction;

g. a comprehensive relocation plan, which shall include plans for staffing the facility, the moving and installation of gaming devices and equipment into the facility, security and surveillance for the facility, and a date for the commencement of gaming activities at the facility; and

h. any other information, documentation, plan, or description deemed relevant and requested by the board or division.

C. No licensee shall be allowed to commence gaming activities at a facility until the division has determined that all necessary staffing, training, security and surveillance, technical, accounting, and internal control procedures are acceptable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 44:

## **Chapter 29. Operating Standards**

### **§2910. Passenger Embarkation and Disembarkation, Riverboat Only**

A. Except in the case of emergencies, passengers and crew may embark and disembark from a vessel only at its authorized berth.

B. ....

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 38:1657 (July 2012), amended LR 44:

#### **Family Impact Statement**

Pursuant to the provisions of R.S. 49:972, the Gaming Control Board, through its chairman, has considered the potential family impact of the proposed Rule.

It is accordingly concluded that the proposed Rule would appear to have no impact on the following:

1. the effect on stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the effect on the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

#### **Poverty Impact Statement**

Pursuant to the provisions of R.S. 49:973, the Gaming Control Board, through its chairman, has considered the potential poverty impact of the proposed Rule.

It is accordingly concluded that the proposed Rule would appear to have no impact on the following:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### **Small Business Analysis**

Pursuant to the provisions of R.S. 49:965.5 the Louisiana Gaming Control Board, through its chairman, has concluded that the proposed Rule is not expected to have a significant impact on small business.

#### **Provider Impact Statement**

Pursuant to the provisions of HCR170 of 2014, the Gaming Control Board, through its chairman, has considered the potential provider impact of the proposed Rule.

It is accordingly concluded that the proposed Rule would appear to have no impact on the following:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the costs to the provider to provide the same level of service;
3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments to Earl G. Pitre, Jr., Assistant Attorney General, Louisiana Department of Justice, Gaming Division, 1885 North Third Street, Fifth

Ronnie Jones  
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Riverboat Economic Development**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will result in a workload increase for the Gaming Control Board related to additional quarterly reports and new applications from the licensees; however, this additional workload will be absorbed using existing budget authority and resources.

The proposed rule change codifies ACT 469 of the 2018 Regular Legislative Session related to requirements for quarterly reporting, clarification of the term “vessel”, and application for the relocation of gaming operations to a facility within 1,200 feet of the riverboat’s licensed berth. The application must include the riverboat licensee’s relocation plan, a detailed capital improvement and reinvestment plan, and any other information required by the Gaming Control Board. Furthermore, the proposed rule change establishes the criteria for the plans and specifications of the vessel and the facility; the licensing of the vessel; and the three types of certification: certificated vessel, non-certificated vessel, and for riverboat licensees operating in a facility, a valid certificate of compliance for that facility.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will have an unknown impact on revenue collections of state and local governmental units. Authorizing relocation of gaming operations to a facility within 1,200 feet of a riverboat’s licensed berth may impact consumer behavior in an unknown manner. Whether this will increase state and local revenues or shift activities between facilities is unknown. To the degree that the proposed rule change may result in an expansion of gaming activity, revenue may increase at the statewide or local level. To the degree that the proposed rule change shifts gaming activity, local revenues may grow or shrink between localities.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will result in an unknown impact on costs and economic benefits to licensed riverboats. Authorizing relocation of gaming operations to a facility within 1,200 feet of a riverboat’s licensed berth may impact consumer behavior in an unknown manner. Whether this will result in costs or economic benefits to licensees is unknown. To the degree that the proposed rule change may result in an expansion of gaming activity, economic benefits may increase at the statewide or local level. To the degree that the proposed rule change shifts gaming activity, individual locations may realize indeterminable costs or economic benefits.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change will result in an unknown impact on competition and employment. To the degree that the proposed rule change may result in an expansion of gaming activity, competition and employment may benefit at the statewide or local level. To the degree that the proposed rule change shifts gaming activity, competition and employment may expand or contract between localities.

Ronnie Jones

Evian Brasseaux

**NOTICE OF INTENT**

**Department of Public Safety and Corrections  
Office of the State Fire Marshal  
Uniform Construction Code Council**

Uniform Construction Code—Tiny Houses (LAC 17:I.107)

In accordance with the provisions of R.S. 40:1730.26 and R.S. 40:1730.28, relative to the authority of the Louisiana State Uniform Construction Code Council (LSUCCC) to promulgate and enforce rules and in accordance with R.S. 49:953(B), the Administrative Procedure Act, the Department of Public Safety and Corrections, Office of the State Fire Marshal, Louisiana State Uniform Construction Code Council (LSUCCC) hereby gives notice that it proposes to amend and adopt the following rule. The purpose of amending and adopting the current rule is to add the 2018 International Residential Code (IRC), Appendix Q, Tiny Houses, to the Uniform Construction Code. The proposed Rule would allow for the inspection and permitting of said homes in any jurisdiction in the state. It would also allow for the inspection of tiny houses on-site and at manufacturing facilities, making them eligible for a residential permit.

**Title 17  
CONSTRUCTION**

**Part I. Uniform Construction Code**

**§107. International Residential Code  
(Formerly LAC 55:VI.301.A.3.a)**

A.1. *International Residential Code*, 2015 Edition, not including Parts I-Administrative, and VIII-Electrical. The applicable standards referenced in that code are included for regulation of construction within this state. The enforcement of such standards shall be mandatory only with respect to new construction, reconstruction, additions to homes previously built to the *International Residential Code*, and extensive alterations. 2018 International Residential Code, Appendix Q, Tiny Houses, with inspections on site and or in the manufacturing plant as required by the LSUCCC regulations. Appendix J, Existing Buildings and Structures, may be adopted and enforced only at the option of a parish, municipality, or regional planning commission.

1.a. - 6.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D) and 40:1730.26(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34:883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 36:2574 (November 2010), effective January 1, 2011, LR 37:601 (February 2011), LR 37:913 (March 2011), repromulgated LR 37:2187 (July 2011), repromulgated LR 37:2726 (September 2011), LR 37:3065 (October 2011), LR 38:1994 (August 2012), amended by the Department of Public Safety and Corrections, Uniform Construction Code Council, LR 39:1825 (July 2013), LR 39:2512 (September 2013), LR 40:2609 (December 2014), amended by the Department of Public Safety and Corrections, Office of State Fire Marshall, LR 41:2383 (November 2015), amended LR 42:1672

(October 2016), amended by the Department of Public Safety and Corrections, Office of the State Fire Marshal, Uniform Construction Code Council, LR 44:79 (January 2018); amended LR 44:

#### **Family Impact Statement**

1. The effect of this Rule on the stability of the family. This Rule should not have any effect on the stability of the family.

2. The effect of this Rule on the authority and rights of parents regarding the education and supervision of their children. This Rule should not have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of this Rule on the functioning of the family. This Rule should not have any effect on the functioning of the family.

4. The effect of this Rule on family earnings and family budget. This Rule should not have any effect on family earnings and family budget.

5. The effect of this Rule on the behavior and personal responsibility of children. This Rule should not have any effect on the behavior and personal responsibility of children.

6. The effect of this Rule on the ability of the family or local government to perform the function as contained in the proposed Rule. This Rule should not have any effect on the ability of the family or local government to perform the function as contained in the proposed rules.

#### **Poverty Impact Statement**

1. The impact of the proposed rule on child, individual, or family poverty has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on poverty in relation to individual or community asset development as provided in the R.S. 49:973.

2. The agency has considered economic welfare factors and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on poverty.

#### **Small Business Analysis**

1. The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act.

2. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested Person. Interested persons may submit written comments to Melinda L. Long, by mail at Post Office Box 66614, Baton Rouge, LA 70896, by fax at (225) 925-4624, or by e-mail at Melinda.long@la.gov. Written comments will be accepted through the close of business, October 11, 2018.

Lt. Colonel Jason Starnes  
Deputy Superintendent, CAO

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

#### **RULE TITLE: Uniform Construction Code Tiny Houses**

##### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will not result in any costs or savings to state or local governmental units. The proposed rule change adds the 2018 International Residential Code (IRC), Appendix Q, Tiny Houses to the building code. Currently, tiny houses are not eligible for inspection and permitting in any jurisdiction in the state. The proposed rule change would allow for the inspection of tiny houses on-site and at manufacturing facilities, making them eligible for a residential permit. Local governments already have permitting procedures and costs in place to accommodate the inspection and permitting of tiny houses.

##### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will increase revenue collections of local governmental units by an indeterminable amount. The proposed rule change will allow local governmental units to issue residential permits and collect the associated permit fees for tiny houses following inspection. The revenue increase is indeterminable because permit fees may vary between local governmental units and the number of tiny houses requesting a residential permit is unknown.

##### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change will result in both costs and economic benefits for individuals seeking inspection and permitting of a tiny house. These individuals would incur the cost of the permit fee and any applicable inspection fees. Permitting and inspections of tiny houses should result in additional housing options for consumers.

##### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change may increase employment opportunities in the state. Currently, tiny houses are not eligible for inspection and permitting in any jurisdiction in the state. By allowing for the inspection and permitting of tiny houses, the proposed rule change will establish a new market for tiny houses. Tiny houses constructed on-site would provide employment opportunities in the construction sector. Additionally, proposed rule may provide employment opportunities related to the manufacturing of tiny houses.

Lt. Col. Jason Starnes  
Deputy Superintendent, CAO  
1809#047

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office



## NOTICE OF INTENT

### Department of Revenue Office of Alcohol and Tobacco Control

#### Digitized Identification Acceptance and Education (LAC 55:VII.401)

Under the authority of R.S. 26:922 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control, hereby gives notice of its intent to promulgate §401 on requirements for digitized identification acceptance by retailers, education requirements for retailers regarding same, and to provide for other related matters. The promulgation of §401 helps the Office of Alcohol and Tobacco Control provide guidelines for its retailers with the implementation of the provisions of Act 552 of the 2018 Regular Session of the Louisiana Legislature which provides for issuance of a digitized special identification card and to establish a fee to install the application to display a digitized special identification card. This proposed Section is intended to be adopted and effective on December 20, 2018.

#### Title 55

#### PUBLIC SAFETY

#### Part VII. Alcohol and Tobacco Control

##### Subpart 1. Beer and Liquor

#### Chapter 4. Alcohol Public Safety Regulations

#### §401. Digitized Identification Acceptance and Education

A. LA Wallet digitized identification shall be the only digital identification that may be accepted by alcohol and tobacco retailers.

B. Alcohol and tobacco retailers may choose to accept digitized identification or they may still require a physical identification when checking identification.

C. Retailers whom the agency has required to utilize scanners shall still be required to request and scan a physical identification and may not accept digitized identification.

D. Digitized identification may be accepted by establishments provided that all employees have been properly trained prior to acceptance. Establishments which intend to accept digital identification shall conduct their own employee training and provide the following information to all employees prior to acceptance:

1. Hands-off/no-touch: digitized identification was designed so that anyone validating or verifying the information on the holder's device may do so without handling the device. All interactive features are to be completed by the holder of the device with the digitized identification application and not by the retailer.

2. Validity of digitized identification: the validity of digitized identification may easily be determined by the green or red line across the top of the electronic license. This line will read "VALID" or "INVALID", respectively. If the license has not been suspended, revoked, or been determined invalid for any other reason, the word "VALID" shall be displayed in green.

3. Over 21/under 21 orientation: the age of the digitized identification holder may be determined by the orientation of the digital identification. For individuals over the age of 21 years old, the license will be displayed horizontally on the holder's electronic device. For individuals under the age of 21

years old, the license will be displayed vertically on the holder's electronic device.

4. Refresh button: the digitized identification application shall contain a "refresh" button which acts as an interactive safeguard. This button enables the holder of the device to contact the Department of Motor Vehicles and re-validate the license, usually in less than three seconds. The time of the last update will be displayed next to the license, above the refresh button. Retailers are encouraged to require the holder of the digitized identification to refresh their identification to aid in determining authenticity.

5. Security seal: if the retailer requires further validation of the digitized identification, the retailer may ask the holder of the digitized identification to press and hold their finger on the identification displayed on their device screen to reveal the security seal. Retailers are encouraged to require the holder of the digitized identification to display the security seal to aid in determining authenticity.

6. View button: if the retailer needs to view the date of birth more clearly to verify, the digitized identification application is equipped with a "view" button which may be activated by the holder of the digitized identification. When the holder activates the "view" button, the device application will then display a larger print version of the holder's identification number, date of birth, endorsements, and restrictions.

7. All other rules and requirements for physical identification still apply for digitized identification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:922.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 44:

#### Family Impact Statement

1. The effect of this Rule on the stability of the family. This Rule should have no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

2. The effect of this Rule on the authority and rights of parents regarding the education and supervision of their children. This Rule should not have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of this Rule on the functioning of the family. This Rule should not have any effect on the functioning of the family.

4. The effect of this Rule on family earnings and family budget. This Rule should not have any effect on family earnings and family budget.

5. The effect of this Rule on the behavior and personal responsibility of children. This Rule should not have any effect on the behavior and personal responsibility of children.

6. The effect of this Rule on the ability of the family or local government to perform the function as contained in the proposed Rule. This Rule should not have any effect on the ability of the family or local government to perform the function as contained in the proposed Rule.

#### Poverty Impact Statement

1. The impact of the proposed Rule on child, individual, or family poverty has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on poverty in relation to individual or community asset development as provided in the R.S. 49:973.

2. The agency has considered economic welfare factors and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on poverty.

#### **Small Business Analysis**

1. The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act, R.S. 49:965.2 et seq.

2. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

#### **Provider Impact Statement**

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments to Commissioner Juana Marine-Lombard, Office of Alcohol and Tobacco Control, P.O. Box 66404, Baton Rouge, LA 70896 or at [legal.department@atc.la.gov](mailto:legal.department@atc.la.gov). Written comments will be accepted through the close of business, October 15, 2018.

Juana Marine-Lombard  
Commissioner

### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Digitized Driver's License or Special ID Card**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no direct costs or savings to state or local governmental units for this proposed rule. There may be indirect savings that stem from the efforts to promote the public health, safety and welfare, but any such amount is indeterminable at this time.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

This proposed rule amendment will not affect revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

There will be no direct material costs or savings to alcohol and tobacco retailers due to this proposed rule, as participation is optional. For retailers that opt to participate, employee training costs may be incurred, but are expected to be negligible. There may be indirect savings that stem from the efforts to promote the public health, safety and welfare, but any such amount is indeterminable at this time.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

This proposed rule is not expected to have a material impact on competition or employment.

Juana Marine-Lombard  
Commissioner  
1809#056

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

### **NOTICE OF INTENT**

#### **Department of Revenue Policy Services Division**

Sourcing of Sales other than Sales of Tangible Personal Property; Exclusion of Certain Sales of Tangible Personal Property from the Sales Factor (LAC 61:I.1135 and 1136)

Under the authority of R.S. 47:1511 and R.S. 47:287.95 and pursuant to the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1135 and 1136.

The primary purpose of this proposed regulation is to implement Act 8 of the 2016 Second Extraordinary Session of the Louisiana Legislature.

#### **Title 61**

#### **REVENUE AND TAXATION**

#### **Part I. Taxes Collected and Administered by the Secretary of Revenue**

#### **Chapter 11. Corporation Income Tax**

#### **§1135. Sourcing of Sales other than Sales of Tangible Personal Property**

A. General. R.S. 47:287.95(L) provides for the inclusion in the numerator of the sales factor of sales other than sales of tangible personal property.

B. Market-Based Sourcing. Sales other than sales of tangible personal property are sourced to Louisiana if and to the extent that the taxpayer's market for the sales is in Louisiana. In general, the provisions in this section establish rules for:

1. determining whether and to what extent the market for a sale other than the sale of tangible personal property is in Louisiana,
2. reasonably approximating the state or states of assignment where the state or states cannot be determined,
3. excluding certain sales of intangible property from the numerator and denominator of the receipts factor pursuant to R.S. 47:287.95(L)(1)(e), and
4. excluding sales from the numerator and denominator of the sales factor, pursuant to R.S. 47:287.95(M), where the state or states of assignment cannot be determined or reasonably approximated, or where the taxpayer is not taxable in the state to which the sales are assigned.

C. Taxable in another State. A taxpayer is taxable within another state if it meets either one of two tests:

1. by reason of business activity in another state, the taxpayer is subject to one of the following types of taxes: A net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
2. by reason of such business activity, another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on the taxpayer.

D. State. For purposes of this regulation, *state* means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

E. General Principles of Application; Contemporaneous Records. In order to satisfy the requirements of this regulation, a taxpayer's assignment of sales other than sales of tangible personal property must be consistent with the following principles:

1. A taxpayer shall apply the rules set forth in this regulation based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing, including, without limitation, the taxpayer's books and records kept in the normal course of business. A taxpayer shall determine its method of assigning sales in good faith, and apply it consistently with respect to similar transactions and year to year. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its sales, including its underlying assumptions, and shall provide those records to the Secretary of the Louisiana Department of Revenue upon request.

2. This regulation provides various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and must continue to do so with each succeeding rule in the hierarchy, where applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.

3. A taxpayer's method of assigning its sales, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of sales consistent with these regulatory standards rather than an attempt to lower the taxpayer's tax liability. A method of assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.

F. Rules of Reasonable Approximation

1. In General. In general, this regulation establishes uniform rules for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in Louisiana. This regulation also sets forth rules of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in accordance with specific rules of approximation as prescribed in this regulation. In other cases, the applicable rule in this regulation permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable rules or standards set forth in this regulation.

2. Approximation Based Upon Known Sales. In an instance where, applying the applicable rules set forth for sale of a service, a taxpayer can ascertain the state or states of

assignment of a substantial portion of its sales from sales of substantially similar services ("assigned sales"), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned sales, it shall include those sales which it believes tracks the geographic distribution of the assigned sales in its sales factor in the same proportion as its assigned sales.

3. Related-Party Transactions; Information Imputed from Customer to Taxpayer. Where a taxpayer has sales subject to this regulation from transactions with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.

G. Rules with Respect to Exclusion of Receipts from the Receipts Factor

1. The sales factor only includes those amounts defined as sales under applicable statutes and regulations.

2. Certain sales arising from the sale of intangibles are excluded from the numerator and denominator of the sales factor pursuant to R.S. 47:287.95 (L)(1)(e).

3. In a case in which a taxpayer cannot ascertain the state or states to which sales are to be assigned pursuant to the applicable rules set forth in this regulation, (including through the use of a method of reasonable approximation, where relevant) using a reasonable amount of effort undertaken in good faith, the receipts must be excluded from the numerator and denominator of the taxpayer's sales factor pursuant to R.S. 47:287.95 (M).

4. In a case in which a taxpayer can ascertain the state or states to which sales are to be assigned pursuant to this regulation, but the taxpayer is not taxable in one or more of those states, the sales that would otherwise be assigned to those states where the taxpayer is not taxable must be excluded from the numerator and denominator of the taxpayer's sales factor pursuant to R.S. 47:287.95(M).

H. Sale of a Service

1. General Rule

- a. The sale of a service is sourced to Louisiana if and to the extent that the service is delivered to a location in Louisiana. In general, the term "delivered to a location" refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth below.

2. Direct Personal Services Received by a Natural Person

- a. In General

- i.(a). Except as otherwise provided in this regulation, direct personal services are services that are physically provided in person by the taxpayer, where the customer or the customer's tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of direct personal services include, without limitation: cleaning services; pest control; medical and dental services, including medical testing, x-rays and mental health care and treatment; child care; hair cutting and salon services; live entertainment

and athletic performances; and in-person training or lessons. Direct personal services include services within the description above that are performed at:

[i]. a location that is owned or operated by the service provider or

[ii]. a location of the customer, including the location of the customer's tangible property.

(b). Various professional services, including legal, accounting, financial and consulting services, and other similar services, although they may involve some amount of direct person contact, are not treated as direct personal services within the meaning of this regulation.

b. Assignment of Sales

i. Rule of Determination. Except as otherwise provided in this regulation, if the service provided by the taxpayer is a direct personal service, the service is delivered to the location where the service is received. Therefore, the sale is in Louisiana if and to the extent the customer receives the direct personal service in Louisiana. In assigning its sales from direct personal services, a taxpayer must first attempt to determine the location where a service is received, as follows:

(a). If the service is performed with respect to the body of an individual customer in Louisiana (e.g. hair cutting or x-ray services) or in the physical presence of the customer in Louisiana (e.g. live entertainment or athletic performances), the service is received in Louisiana.

(b). If the service is performed with respect to the customer's immovable property in Louisiana or if the service is performed with respect to the customer's tangible personal property at the customer's residence in Louisiana or in the customer's possession in Louisiana, the service is received in Louisiana.

(c). If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be received by the customer at the taxpayer's location in Louisiana, the service is received in Louisiana.

(d). If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed within or outside Louisiana, the service is received in Louisiana if the property is shipped or delivered to the customer in Louisiana.

c. Rule of Reasonable Approximation. In an instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of sale from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states. If the state to which the sales are to be assigned can be determined or reasonably approximated, but the taxpayer is not taxable in that state, the receipts that would otherwise be assigned to the state are excluded from the numerator and denominator of the taxpayer's sales factor pursuant to R.S. 47:287.95(M).

3. Non Direct Personal Services Received by a Natural Person. Non direct personal services delivered to a natural person shall be sourced to the customer's billing address.

a. Non direct personal services include, without limitation, management services, bank and financial services, financial custodial services, investment and brokerage services, fiduciary services, tax preparation, payroll and

accounting services, lending services, credit card services (including credit card processing services), data processing services, legal services, consulting services, video production services, graphic and other design services, engineering services, and architectural services.

b. *Billing address* means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer's account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.

4. Services Delivered to an Unrelated Business Entity

a. Services with a Substantial Connection to a Specific Geographic Location

i. Services provided to an unrelated business entity that have a substantial connection to a specific geographic location shall be sourced to the state of the specific geographic location. If the services have a substantial connection to specific geographic locations in more than one state, the services shall be reasonably sourced between those states.

ii. Examples

(a). Cleaning Company, Inc. (taxpayer) has a contract to provide cleaning services to Company A, an unrelated business entity. The contract specifies that cleaning services are to be provided to company A's locations in Louisiana and other states. Cleaning Company, Inc. should source a portion of the total service receipts to Louisiana based on the amount of services performed at company A's locations in Louisiana compared to the total amount of services performed at all of company A's locations.

(b). Training Company, Inc. (taxpayer) contracts with company B, an unrelated business entity, to provide on-site training services to company B's employees at company B's business offices located in Louisiana and three other states. The services are related to specific geographic locations; therefore they should be sourced to the state where company B's employees received the training. Training Company, Inc. should source the receipts from its contract with company B by reasonably assigning those receipts between Louisiana and the three other states using a formula based on the number of training hours provided to company B locations in Louisiana to the total number of training hours provided to all company B locations.

(c). Engineering Company, Inc. (taxpayer) contracts with company C, an unrelated business entity, to provide engineering services related to the construction of an office complex in Louisiana. Engineering Company, Inc. performs some of their service in Louisiana at the building site and additional service in state B at their headquarters. The engineering services are related to a specific geographic location; i.e. the building site in Louisiana; therefore all of the services should be sourced to Louisiana.

b. Services without a Substantial Connection to a Specific Geographic Location

i. Services provided to an unrelated business entity that do not have a substantial connection to a specific geographic location shall be sourced to the state of the taxpayer's commercial domicile.

ii. *Commercial domicile* is the principle place from which the business is directed or managed.

c. Alternative Methods. In the case where the methods contained in Subparagraphs H.4.a and H.4.b of this

section fail to clearly reflect the taxpayer's market in Louisiana, the taxpayer may utilize, or the department may require, the use of alternative methods, including but not limited to the following:

i. By assigning the sales to the state where the contract of sale is principally managed by the customer:

(a). state where a contract of sale is principally managed by the customer” means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.

ii. by assigning the sales to the customer's place of order;

iii. by assigning the sales to the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5 percent of its receipts from sales of all services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer.

5. Services Delivered to a Related Business Entity. In any instance in which the service is sold to a related entity, the state or states to which the service is assigned is the place of receipt by the related entity as reasonably approximated using the following hierarchy:

a. if the service primarily relates to specific operations or activities of a related entity conducted in one or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related entity's payroll at the locations to which the service relates in the state or states; or

b. if the service does not relate primarily to operations or activities of a related entity conducted in particular locations, but instead relates to the operations of the related entity generally, then to the state or states in which the related entity has employees, in proportion to the related entity's payroll in those states.

I. Sale, Rental, Lease, or License of Immovable Property. In the case of the sale, rental, lease, or license of immovable property, the receipts are sourced to Louisiana if and to the extent that the immovable property is located in Louisiana.

J. Rental, Lease, or License of Tangible Personal Property. In the case of the rental, lease, or license of tangible personal property, the receipts are sourced to Louisiana if and to the extent that the tangible personal property is located in Louisiana.

K. Lease or License of Intangible Property. In the case of the lease or license of intangible property, the receipts are sourced to Louisiana if and to the extent that the intangible property is used in Louisiana.

#### L. Sale of Intangible Property

1. Assignment of Sales. The assignment of sales to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold.

2. Sale Where Receipts are Contingent on Productivity, Use or Disposition of the Intangible Property

a. In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use or disposition of the property, the receipts from the sale are assigned as follows:

i. the receipts are in Louisiana if and to the extent the intangible is used in Louisiana. In general, the term *use* is construed to refer to the location of the market for the use of the intangible property that is being sold and is not to be construed to refer to the location of the property or payroll of the owner.

3. Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area

a. In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the sale is assigned to a state if and to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in this state, the taxpayer shall assign the sale to Louisiana. If the intangible property is used or is authorized to be used in Louisiana and one or more other states, the taxpayer shall assign the sale to Louisiana to the extent that the intangible property is used in or authorized for use in Louisiana through the means of a reasonable approximation.

#### 4. Excluded Sales

a. Sales of intangible property not described by Paragraphs 2 and 3 of this Subsection shall be excluded from the numerator and the denominator of the sales factor. Excluded sales include, but are not limited to, the sale of a partnership interest, the sale of business “goodwill,” the sale of an agreement not to compete, and sales of similar intangible property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 47:287.95.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 44:

#### **§1136. Exclusion of Certain Sales of Tangible Personal Property from the Sales Factor**

A. General sourcing rule for sales of tangible personal property. Generally, for purposes of determining a taxpayer's Louisiana Apportionment Percent, sales of tangible personal property are sourced to the location where the tangible personal property is ultimately received by the purchaser.

B. Exclusion. Pursuant to R.S. 47:287.95(M), sales, including sales of tangible personal property, shall be excluded from both the numerator and the denominator of the sales factor if either of the following conditions apply:

1. the taxpayer is not taxable in a state to which a sale is assigned; or

2. the state of assignment cannot be determined or reasonably approximated pursuant to R.S. 47:287.95 and the regulations thereunder.

C. Taxable in Another State. A taxpayer is taxable within another state if it meets either one of two tests:

1. by reason of business activity in another state, the taxpayer is subject to one of the following types of taxes: A net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

2. by reason of such business activity, another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on the taxpayer.

D. State. For purposes of this regulation, *state* means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

E. Reasonable Approximation, Generally. In a case in which a taxpayer cannot ascertain the state or states to which sales are to be assigned pursuant to the applicable rules set forth in this regulation, (including through the use of a method of reasonable approximation, where relevant) using a reasonable amount of effort undertaken in good faith, the receipts must be excluded from the numerator and denominator of the taxpayer's sales factor pursuant to R.S. 47:287.95(M).

F. Rules of Reasonable Approximation

1. Approximation Based Upon Known Sales. In an instance where, applying the applicable rules set forth for sales of tangible personal property, a taxpayer can ascertain the state or states of assignment of a substantial portion of its sales from sales of substantially similar tangible personal property, (assigned sales), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned sales, it shall include those sales which it believes tracks the geographic distribution of the assigned sales in its sales factor in the same proportion as its assigned sales.

2. Related-Party Transactions—Information Imputed from Customer to Taxpayer. Where a taxpayer has sales subject to this regulation from transactions with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.

3. Approximation Based on Place of Sale. In an instance in which the state or states where tangible personal property is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of sale from which it can reasonably approximate the state or states where the tangible personal property is received, the taxpayer shall reasonably approximate such state or states as the place of sale.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1511 and R.S. 47:287.95.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 44:

**Family Impact Statement**

The proposed adoption of LAC 61:I.1135-1136 regarding corporation income tax; apportionment of income; sourcing of sales other than sales of tangible personal property; exclusion of certain sales of tangible personal property from the sales factor should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on

family formation, stability and autonomy. Specifically, the implementation of this proposed rule will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform this function.

**Poverty Impact Statement**

The proposed regulation will have no impact on poverty as described in R.S. 49:973.

**Small Business Analysis**

It is anticipated that the proposed Rule should not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed Rule to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

**Provider Impact Statement**

The proposed regulation will have no known or foreseeable effect on:

1. the staffing levels requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the provider to provide the same level of service;
3. the overall effect on the ability of the provider to provide the same level of service.

**Public Comments**

Any interested person may submit written data, views, arguments or comments regarding this proposed regulation to David Hansen, Attorney, Policy Services Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4:30 p.m. on October 26, 2018.

**Public Hearing**

A public hearing will be held on October 29, 2018 at 10 a.m. in the LaBelle Room, located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kimberly Lewis Robinson  
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Sourcing of Sales other than Sales of  
Tangible Personal Property; Exclusion of Certain Sales  
of Tangible Personal Property from the Sales Factor**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE  
OR LOCAL GOVERNMENT UNITS (Summary)

The purpose of the proposed rule is to implement some of the provisions of Act 8 of the 2016 Second Extraordinary Session of the Louisiana Legislature. Act 8 enacted rules for the sourcing of sales, other than sales of tangible personal property, for purposes of determining the sales ratio component of the corporate income tax apportionment ratio. Generally, the new rules source a sale to Louisiana, to the extent the market for the

sale is in Louisiana. Also, a sale is excluded from the numerator and denominator if the taxpayer is not taxable in the state to which the sale is assigned or the state of assignment cannot be determined or reasonably approximated. The proposed rule provides guidance and clarification for complying with these sourcing rules. Minor implementation costs to the Department of Revenue (LDR), related to taxpayer inquiries, are expected. The costs are relatively small and will be absorbed in LDR's budget allocation.

## II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The impact on state revenue collections is indeterminable. LDR does not have the information necessary to estimate the impact. Market sourcing may incorporate an increased amount of net incomes of firms selling into the state's tax base. However, to the extent firms have large out-of-state sales, market sourcing may reduce their tax liabilities.

This proposal should have no impact on the revenue collections of local governmental units.

## III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No additional tax forms or paperwork is anticipated of affected taxpayers, as LDR staff indicate that field auditors will assess whether or not sales are being sourced to the appropriate locations. Tax liabilities of affected taxpayers will increase or decrease by an indeterminable amount, dependent on the individual business model of each taxpayer.

## IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will have an effect on competition and employment as a result of shifting tax burdens among firms, both in-state and out-of-state, as well as among firms within the state. As a result of the shifting tax burdens, firms carrying a lower tax burden will have a competitive advantage over firms carrying a larger tax burden as a result of the market sourcing methodology.

Kimberly Lewis Robinson  
Secretary  
1809#053

Gregory V. Albrecht  
Chief Economist  
Legislative Fiscal Office

## NOTICE OF INTENT

### Department of State Board of Election Supervisors

#### Department of State's Museums (LAC 25:VI)

Pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and under the authority of R.S. 36:742, R.S. 36:744, and R.S. 49:222(A), the Department of State is proposing to adopt rules governing its museums regarding the operation and fees for the department's museums. The proposed effective date of this Rule would be the date the final Rule is promulgated in the *Louisiana Register*.

### Title 25

### CULTURAL RESOURCES

#### Part VI. Department of State's Museums

#### Chapter 1. General Information

#### §101. Definitions

A. As used in this Part, unless the content clearly provides otherwise, the following terms shall be defined as follows:

*Department*—the Department of State.

*Museum*—a single building that is open to the public and is operated by the Department of State.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 36:744.

HISTORICAL NOTE: Promulgated by the Department of State, LR 44:

#### §103. Hours of Operation

A. Each museum will be open to the public in accordance with a published schedule established by the department in §103.B and posted on the department's website. All closures of a museum will be posted for specific dates.

B. Detailed below are the hours of operation for all museums under the Department of State:

Building	Location	Hours of Operation
Eddie G. Robinson Museum	Grambling	Tuesday through Friday (10 a.m. to 4 p.m.)
Germantown Colony Museum	Minden	Thursday through Saturday (10 a.m. to 4 p.m.)
Louisiana Military Hall of Fame and Museum	Abbeville	Thursday through Saturday (10 a.m. to 4 p.m.)
Louisiana State Cotton Museum	Lake Providence	Tuesday through Saturday (10 a.m. to 4 p.m.)
Louisiana Delta Music Museum	Ferriday	Wednesday through Friday (9 a.m. to 4 p.m.)
Louisiana State Exhibit Museum	Shreveport	Monday through Friday (9 a.m. to 4 p.m.)
Louisiana State Oil and Gas Museum	Oil City	Tuesday through Friday (10 a.m. to 4 p.m.)
Mansfield Female College Museum	Mansfield	Wednesday through Friday (10 a.m. to 4 p.m.)
Louisiana Old State Capitol	Baton Rouge	Tuesday through Friday (10 a.m. to 4 p.m.) and Saturday (9 a.m. to 3 p.m.) *
Tioga Heritage Park and Museum	Pineville	Currently Closed

\*The Old State Capitol is closed on Saturdays if there is a downtown parade in Baton Rouge or if there is an early wedding or event scheduled. In addition, the Louisiana Old State Capitol is closed for cyclical maintenance typically from mid-December to mid-January depending on the construction projects at that time.

C. The department is authorized to close museums or sections of museums as necessary. All closures will be posted on the department's website.

D. The department is authorized to open museums on official state holidays, if affected employees are compensated in accordance with applicable laws and the Department of Civil Service's rules.

E. Due to staffing and other operational concerns, the department may turn away a group that has not reserved its visit in advance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 36:744.

HISTORICAL NOTE: Promulgated by the Department of State, LR 44:

#### §105. Building Use Policy for Events

A. All department museums are historical, cultural, and educational institutions whose primary purpose shall be to collect, preserve, and present, as an educational resource, objects of art, documents, artifacts, and the like that reflect the history, art, and culture of Louisiana.

B. Functions and events may be permitted only insofar as such use does not compromise or put at risk the mission, accreditation, or integrity of the museum and its collections and such use comports with applicable law and the regulations set forth herein.

C. Certain spaces within the museum(s) may be designated as being unavailable for functions and events.

D. The department is authorized to determine whether the proposed use, user, and museum or space within a museum meet the eligibility criteria for the department's building rental policy for events and whether the request complies with the procedures and requirements set forth in this chapter and applicable laws.

E. Procedure

1. Eligible users include:

- nonprofit organizations;
- governmental agencies; or
- groups, persons, or companies whose proposed use is, in the opinion of the secretary of state or his designee, not in conflict with the purposes of the department.

2. Eligible Use. Requests will be considered from eligible organizations, agencies, groups, persons, and companies only for use that does not compromise or put at risk the mission, accreditation, or integrity of the museum and its collections. Such use generally falls into one of four types of events or functions:

- receptions and sit-down meals;
- business meetings and lectures;
- concerts or theatrical productions; or
- weddings.

3. Ineligible Use. No political campaign events may be held at any of the department's museums.

4. Capacity. Requests shall state the reasonably anticipated attendance at the event, which attendance shall not exceed the maximum building capacity of the museum as established by the fire marshal.

5. All requests shall be submitted in writing in accordance with the specific museum's guidelines to allow for proper planning, coordination, and completion of all required paperwork, including but not limited, to the required written event agreement.

6. The department has the discretion to deny an application if:

- the applicant does not meet the eligibility criteria;
- the application is not complete;
- the application is not submitted timely;
- the proposed use exceeds the capacity of the museum or space within the museum;
- the proposed use may put the museum, its collections, or accreditation at risk;
- the applicant failed to remit the deposit or other amounts when due and payable;
- the applicant failed to present certificates of insurance if required; or
- the applicant failed to comply with the terms of the event agreement.

F. Terms of Use—Event Agreement

1. The terms of use for the event will be established fully in a written agreement between the department and the applicant or a legally authorized representative of the applicant. The event agreement shall be completed and executed by both parties in accordance with the specific museum's guidelines.

2. Each museum has an event agreement specific to its space. The applicant shall comply with all requirements which may include no open flames, no smoking, no red wine, etc. The applicant shall consult with each museum director for the specific requirements.

3. The applicant shall designate an authorized representative to be present for the entire duration of the use. The representative shall have decision-making authority to act on behalf of the applicant. The representative will be responsible for all coordination with the department.

4. Specific information regarding the department's museums is specified in Chapter 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 36:744.

HISTORICAL NOTE: Promulgated by the Department of State, LR 44:

**§107. Building Use Agreement and Charges for Events**

A. Event Rental Fees and Costs. The written event agreement will designate the authorized museum space and time for the approved use and shall specify applicable costs and fees. The event fees include:

1. a base service charge, which is established based on the department's cost of security, custodial, utilities, and administrative support required to service previous functions of a similar size and type; and

2. additional charges imposed if, after the completion of the event, there are any repairs necessary to the museum building, grounds, collections, property, or exhibitions that are the result of improper use. This payment will be due within one business day upon written demand of the department.

B. A deposit shall be paid to the museum to reserve a date. The amount of the deposit and payment date may vary by museum.

C. If an event is held at a museum that has a foundation, one-half of the fees will be made payable to the Department of State and the other one-half will be made payable to the museum's designated non-profit group. That donation will be placed in the foundation whose primary purpose is to support the mission of the specific museum and will be used for acquisitions, conservation, education, endowment, exhibits, publications, and support for building maintenance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 36:744, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, LR 44:

**Chapter 3. Museums Fees**

**§301. Admission Fees**

A. General admission to all Department of State museums are free.

B. Special Promotions

1. The secretary of state or his designee may enter into an agreement or promotion that discounts or waives admission fees other than general admission fees on a defined basis for promoting visitation, public support, and mission-related activities of the department. A special promotion must promote the mission of the museum or an affiliated entity and must not conflict with any applicable law or regulation



2. Special promotions will be tracked and evaluated for achievement of the intended purpose. Special promotions will be reviewed and reauthorized annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 36:744, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, LR 44:

### **§303. Eddie G. Robinson Museum Fees**

A. Daytime Events. Daytime events shall be held during regular business hours. The building shall remain open to the public during the scheduled event time although special arrangements may be made to restrict public access to event areas.

B. Evening Events. Private events shall be no more than four hours in duration and must be scheduled after regular business hours. No event shall run beyond midnight.

C. The fees for daytime and evening events include tables, chairs, janitorial service, and set-up. The breakdown of the event fees is listed below.

1. For a daytime or evening event without food and beverage, the cost will be \$225. The following is a breakdown of the fees:

- a. \$200 event fee for four hours or less; and
- b. \$25 set-up fee.

2. For a daytime or evening event with food and beverage, the cost will be \$325. The following is a breakdown of the fees:

- a. \$300 event fee for four hours or less; and
- b. \$25 set-up fee.

D. All rentals require a \$50 non-refundable deposit to schedule an event.

E. The president of Grambling State University will be allowed six complimentary events per year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:1246, R.S. 36:742, R.S. 36:744, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, LR 44:

### **§305. Louisiana State Cotton Museum Fees**

A. Daytime Events. Daytime events shall be held during regular business hours. The building shall remain open to the public during the scheduled event time although special arrangements may be made to restrict public access to event areas. All of the following daytime event fees include tables, chairs, janitorial service, and set-up and breakdown of the event:

1. for a four-hour event or less without food and beverage, the cost will be \$50 per hour; and
2. for an eight-hour event or less with food and beverage, the cost will be \$100 per hour.

B. Evening Events. Private events shall be no more than four hours in duration and shall be scheduled after regular business hours. No event shall run beyond midnight. The cost will be \$300 per hour.

C. All rentals require a 10 percent non-refundable deposit to reserve the date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 36:744, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, LR 44:

### **§307. Louisiana Delta Music Museum Fees**

A. Daytime Events. Daytime events shall be held during regular business hours. The building shall remain open to the public during the scheduled event time although special

arrangements may be made to restrict public access to event areas. All of the following daytime event fees include tables, chairs, janitorial service, and set-up and breakdown of the event. The cost will be \$200 per hour.

B. Evening and Weekend Events. Private events shall be held for no more than four hours in duration. The cost per hour is \$420. Evening events shall be scheduled after regular business hours. No event shall run beyond midnight.

C. A refundable damage deposit of \$100 is required for all rentals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 36:744, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, LR 44:

### **§309. Louisiana State Exhibit Museum Fees**

A. Evening Events. Private events shall be held for no more than four hours in duration (unless approved by the Director) and shall be scheduled after regular operating hours. The cost shall be \$250 per hour. No event shall run beyond midnight.

B. All rentals shall require a 10 percent deposit to reserve the date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 36:744, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, LR 44:

### **§311. Louisiana Oil and Gas Museum Fees**

A. Evening Events. Private events shall be held for no more than four hours in duration and shall be scheduled after regular business hours. The cost shall be \$500 per hour. No event shall run beyond midnight.

B. A refundable damage deposit of \$250 is required for all rentals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742, R.S. 36:744, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, LR 44:

### **§313. Old State Capitol Fees**

A. Daytime Events. Daytime events shall be held during regular business hours. The building shall remain open to the public during the scheduled event time although special arrangements may be made to restrict public access to event areas. All of the following daytime event fees include tables, chairs, janitorial service, and set-up and breakdown of the event:

1. \$1,500 allows up to 200 guests for a luncheon or meeting with access to the senate chamber and rotunda;
2. \$1,000 allows up to 200 guests for a seminar, conference, or general meeting to be held in the house chamber (no food or beverage is allowed in this space);
3. \$300 allows up to 18 guests, seated, for a meeting or business lunch in the 1882 Adjutant General's Office (the Old State Capitol's spacious boardroom); and
4. a nonrefundable deposit of 20 percent of the total rental fee which is required to book the date.

B. Evening Events. Private events shall be no more than three hours in duration and shall be scheduled after regular business hours. No event shall run beyond 11:00 p.m. All of the following evening event fees include tables, chairs, janitorial service, and set-up and breakdown of the event:

1. \$6,000 allows up to 350 guests for a gala, fundraising event, cocktail party, wedding reception, or similar event with access to the senate chamber and the first

and second floor rotunda areas (these types of events may not be held during regular business hours);

2. \$2,500 allows up to 200 guests for a seated banquet or rehearsal dinner (not a wedding reception or similar event) with access to the senate chamber; and

3. \$1,500 allows up to 200 guests seated in the house chamber for a wedding ceremony, seminar, or conference. (If also reserving the senate chamber for a wedding reception or similar event, the price to reserve the house chamber is reduced to \$500. If reserving the house chamber for a wedding ceremony or program, additional hours are allowed if making the total time of the event four hours in duration.) (i.e. cost for wedding ceremony or program and reception \$6,000 + \$500 = \$6,500; program or ceremony only = \$1,500).

4. A damage deposit of \$500 is required for all evening events and is due 30 days prior to the event. This deposit shall be in the form of a personal or business check made payable to the Louisiana Department of State. This check will not be cashed and will be returned to the client once it is determined that no damages occurred and the event ended in a timely manner.

C. Photography sessions are done during regular business hours at a cost of \$200 per photography session. Photography sessions, including bridal photographs, shall be scheduled in advance and are allowed in designated areas on the first and second floors. Photographers and their clients will be required to work around visitors, exhibit items, and items set-up for events. Photographs shall be completed during a two-hour appointment.

#### D. Grounds

1. Each event held on the grounds of the Old State Capitol will have unique qualities. Fees and policies will be discussed on an individual basis.

2. Private use of the grounds will not be allowed during annual festivals and holidays or community related events. Usage during these times will be restricted to the Old State Capitol sponsored functions.

3. The Old State Capitol does not provide tables, chairs, or trashcans for outdoor events.

4. No fee for photography sessions taken only on the grounds. These sessions shall be scheduled in advance and shall be taken during regular business hours.

E. A nonrefundable deposit in the amount of 20 percent of the total rental fee is required to book the date.

F. Admission may be charged for special exhibits or activities. Admission for the "Ghosts of the Castle" film at the Old State Capitol (OSC) is \$3 per individual or \$2 per person for a group.

AUTHORITY NOTE: Promulgated in accordance with R.S. 25:375(B), R.S. 36:742, R.S. 36:744, and R.S. 49:222(A).

HISTORICAL NOTE: Promulgated by the Department of State, LR 44:

## Chapter 5. Prior Rules and Regulations

### §501. Repeal of Prior Rules and Regulations

A. All prior rules and regulations which may have been adopted for any of the above-mentioned museums are hereby repealed in their entirety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:742 and R.S. 36:744.

HISTORICAL NOTE: Promulgated by the Department of State, LR 44:

## Family Impact Statement

The proposed Rule regarding Department of State's museums should not have any known or foreseeable impact on any family as defined by R.S. 49:927 or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform the function as contained in the proposed amendments to the Rule.

## Poverty Impact Statement

The proposed Rule regarding the Department of State's museums should not have any known or foreseeable impact on poverty as defined by R.S. 49:973. Specifically, there should be no known or foreseeable effect on:

1. the household income, assets and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; and
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

## Small Business Analysis

The proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small business.

## Provider Impact Statement

The proposed Rule does not have any known or unforeseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

## Public Comments

Interested persons may submit written comments to Jodie Henderson, Attorney, Legal Division, Department of State, P.O. Box 94125, Baton Rouge, LA 70804-9125. She will be responsible for responding to inquiries regarding the proposed Rule. The deadline for the Department of State to receive written comments is 4:30 p.m. on Wednesday, October 31, 2018 after the public hearing.

## Public Hearing

A public hearing on the proposed Rule is scheduled for Tuesday, October 30, 2018 at 1 p.m. in the Executive

Conference Room at the Department of State Office, 8585 Archives Avenue, Baton Rouge, LA. At that time, all interested persons will be afforded the opportunity to submit data, views, or arguments, either orally or in writing.

R. Kyle Ardoin  
Secretary of State

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will have no anticipated implementation costs or savings to state or local governmental units.

The purpose of the proposed rule is to align the department's administrative code with current statutes and codify existing practices regarding operating hours, fees, and building use policies for the ten museums under the Department of State's jurisdiction.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will not affect revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)**

The proposed rule change will not result in any costs or benefits for directly affected persons or non-governmental entities.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule change will not affect competition or employment.

Shanda Jones  
Undersecretary  
1809#035

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of State  
Elections Division**

**Recognition of Political Parties (LAC 31:I.Chapter 9)**

The Department of State, pursuant to the provisions of the Administrative Procedures Act (R.S. 49:950 et seq.) and under the authority of R.S. 18:441 and R.S. 36:742, is proposing to amend the Rule regarding the recognition of political parties. This Rule shall become effective upon publication in the *Louisiana Register*.

**Title 31**

**ELECTIONS**

**Part I. Election Process**

**Chapter 9. Recognition of Political Parties**

**§905. Political Party Recognition Based on Registered Voters**

A. In order for a political party to be recognized in the state of Louisiana, the political party shall have at a minimum 1,000 or more voters who are registered as being affiliated with said political party in the state of Louisiana.

B. The political party shall be required to purchase from the Department of State a statewide list of all voters who are registered as being affiliated with the political party in the state of Louisiana pursuant to the provisions of LAC 31:II.105 (Sale of Voter Registration Lists). The list of registered voters shall be dated by the department.

C. When requesting a list of registered voters, the department shall use the exact political party name given by the requestor as the party affiliation and the name shall include the word "party." For example, a request for a list of registered voters with the name given by the requestor as "Green" will include "Green" or "Green Party," but would not include a party designation such as "Green Grass," "Green Labor," "Green Peace," or "Greenpeace."

D. All of the following requirements shall be met by the political party for recognition by the secretary of state.

1. A notarized registration statement shall be filed with the secretary of state no later than 90 days prior to the opening of the qualifying period for any election.

2. The registration statement shall be accompanied by a fee in the amount of \$1,000, made payable to the Department of State, only by certified or cashier's check on a state or national bank or credit union, United States postal money order, or money order issued by a state or national bank or credit union.

3. The registration statement shall be accompanied by the list of registered voters provided by the Department of State pursuant to §905.B with the exact political party name, showing at least 1,000 voters who are registered in the state of Louisiana as being affiliated with such political party, and dated no less than 90 days prior to the opening of the qualifying period for any election.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:703 (April 2008), amended LR 44:

**§907. Defects in a Registration Statement**

A. No registration statement of a political party shall be accepted by the secretary of state, if the secretary of state finds any of the following defects:

1. the name of the political party is identical to or deceptively similar to the name of any other existing political party;

2. the name of the political party is deliberately misleading or fraudulent in any respect;

3. the political party's emblem is deceptively similar to an emblem or trademark of any other existing recognized political party; or

4. a political party's registration statement is incomplete and/or does not provide the required information. In such a case, the political party may resubmit a completed notarized registration statement without having to pay an additional registration fee. The secretary of state shall receive a resubmitted registration statement no less than 90 days prior to the opening of qualifying for any election.

B. The secretary of state shall return the rejected registration statement, along with the registration fee, except in the case of an incomplete statement, where the political party chooses to resubmit a completed notarized registration statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:703 (April 2008), amended LR 44:

**§909. Objection to a Registration Statement**

A. Any person aggrieved by the recognition of political party based on the filing of a registration statement alleged to be false, fraudulent, deceptive, substantially misleading, or

otherwise prohibited by law may file an objection in writing to the secretary of state.

B. The objection shall be filed within two years of the political party's registration filing.

C. The secretary of state shall provide written notice by certified mail, return receipt requested, to the recognized political party whose registration statement is objected to and include with the notice a copy of the objection and any related documentation provided with the objection. The recognized political party may file a written response to the objection with the secretary of state within 10 days of the date of receipt of the notice from the secretary of state.

D. The secretary of state shall determine the validity of the objection, by determining whether the political party's registration statement is defective, based on the objection, any related documentation provided with the objection, and, if applicable, the response to the objection from the recognized political party.

E. If the secretary of state determines that the objection is valid, he shall declare the political party's registration statement null and void and cancel the political party's recognition. The secretary of state shall provide written notice of his decision by certified mail, return receipt requested, and the effective date to the political party.

F. The secretary of state shall not return the registration fee when a political party's registration is canceled pursuant to the provisions herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:703 (April 2008), amended LR 44:

#### **§911. Notification**

A. The secretary of state shall provide written notice by certified mail, return receipt requested, to a political party that seeks recognition that the political party's registration statement is rejected for any of the reasons set forth in §907 through §909 above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 18:441 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Elections Division, LR 34:704 (April 2008), amended LR 44:

#### **Family Impact Statement**

The proposed amendment to the Rule cited in LAC 31:I.Chapter 9 regarding recognition of political parties should not have any known or foreseeable impact on any family as defined by R.S. 49:927 or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
  2. the authority and rights of parents regarding the education and supervision of their children;
  3. the functioning of the family;
  4. family earnings and family budget;
  5. the behavior and personal responsibility of children;
- and
6. the ability of the family or a local government to perform the function as contained in the proposed amendments to the Rule.

#### **Poverty Impact Statement**

The proposed amendment to the Rule cited in LAC 31:I.Chapter 9 regarding recognition of political parties should not have any known or foreseeable impact on poverty

as defined by R.S. 49:973. Specifically, there should be no known or foreseeable effect on:

1. the household income, assets and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits; and
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

#### **Small Business Analysis**

The proposed amendment to the Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small business.

#### **Provider Impact Statement**

The proposed amendment to the Rule does not have any known or unforeseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

Interested persons may submit written comments to Jodie Henderson, Attorney, Legal Division, Department of State, P.O. Box 94125, Baton Rouge, LA 70804-9125. She will be responsible for responding to inquiries regarding the proposed amendments to various sections of the Rule. The deadline for the Department of State to receive written comments is 4:30 p.m. on Wednesday, October 31, 2018 after the public hearing.

#### **Public Hearing**

A public hearing on the proposed Rule is scheduled for Tuesday, October 30, 2018, at 1 p.m. in the Executive Conference Room at the Department of State, 8585 Archives Avenue, Baton Rouge, LA. At that time, all interested persons will be afforded the opportunity to submit data, views, or arguments either orally or in writing.

R. Kyle Ardoin  
Secretary of State

#### **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

##### **RULE TITLE: Recognition of Political Parties**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The proposed rule change will have no anticipated implementation costs or savings to state or local governmental units.

The purpose of the proposed rule is to align the department's administrative code with current statutes and procedures regarding the recognition of political parties.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule change will not result in any costs or benefits for directly affected persons or non-governmental entities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not affect competition or employment.

Shanda Jones  
Undersecretary  
1809#036

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Treasury  
Board of Trustees of the Louisiana State  
Employees' Retirement System**

State Employees' Retirement System  
(LAC 58:I.1101, 1107, 1115, 1707,  
2505, 2507, 2509, 2511 and 2519)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") proposes amendment in part and repeal in part of provisions contained in Chapters 11, 17 and 25 of Part I of LAC Title 58. Repeal of §1101(B)(2) is recommended as it refers to a group insurance plan that is no longer administered by the Louisiana Workforce Commission. Section 1107.D should be amended to allow case-by-case exceptions to the requirement that vendors submit only one deduction file per month. It is recommended that §1115 be amended to remove the requirement that vendors report changes in company status or principal officers. Sections 1707, 2505, 2507, 2509, 2511 and 2519 are recommended for repeal in their entirety because they are redundant and simply repeat provisions found in statutory law. The proposed Rule changes comply with and are enabled by R.S. 11:515. The intent is to put the rule changes into place on December 20, 2018.

**Title 58**

**RETIREMENT**

**Part I. Louisiana State Employees' Retirement System  
Chapter 11. Voluntary Deductions from Retiree  
Benefits Payroll**

**§1101. Application Process for Voluntary Payroll  
Deduction**

A. - B.1. ...

2. Repealed.

B.3. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 33:676 (April 2007), LR 34:1639 (August 2008), LR 44:

**§1107. Deduction Authorization**

A. - C. ....

D. Vendor is responsible for submitting a computer file of monthly deductions to LASERS by the twelfth day of the month preceding the deduction using the electronic format and specifications established by LASERS. All deductions for a single vendor shall be submitted on one monthly file: exceptions must be approved on a case-by-case basis by the Executive Director.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009), LR 44.

**§1115. Reporting**

A. Vendors shall report within 10 days of final approval any change in the name, address, or designated coordinator to LASERS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009), LR 44:

**Chapter 17. Purchases of Service by Reinstated  
Employees**

**§1707. Repayment of Refund of Contributions**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 25:2467 (December 1999), repealed LR 44:

**Chapter 25. Procedures for Processing Disability  
Applications**

**§2505. Final Determination**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1958 (October 1998), LR 27:1580 (September 2001), repealed LR 44:

**§2507. Contesting Board Physician's Determination**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1958 (October 1998), LR 27:1581 (September 2001), repealed LR 44:

**§2509. Judicial Appeal**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement

System, LR 22:373 (May 1996), amended LR 24:1959 (October 1998), LR 27:1581 (September 2001), repealed LR 44.

#### **§2511. Certification of Continuing Eligibility**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:220.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1959 (October 1998), LR 26:1490 (July 2000), LR 27:1581 (September 2001), LR 32:265 (February 2006), LR 38:836 (March 2012), repealed LR 44:

#### **§2519. Termination of Benefits**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1960 (October 1998), LR 27:1582 (September 2001), repealed LR 44.

#### **Family Impact Statement**

The proposed Rule repeal is not anticipated to have an impact on family formation, stability, or autonomy as described in R.S. 49:972.

#### **Poverty Impact Statement**

The proposed Rule repeal is not anticipated to have an impact on poverty as described in R.S. 49:973.

#### **Small Business Analysis**

The proposed Rule repeal is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

#### **Provider Impact Statement**

The proposed Rule repeal is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

#### **Public Comments**

Interested persons may submit written comments on the proposed changes until 4:30 pm, October 29, 2018 to Steve Stark, Board of Trustees for the Louisiana State Employees' Retirement System, P.O. Box 44213, Baton Rouge, LA 70804. No rule preamble has been prepared.

Cindy Rougeou  
Executive Director

## **FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES**

### **RULE TITLE: State Employees' Retirement System**

#### **I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will not result in any costs or savings to state or local governmental units.

The proposed rule change repeals the following sections in their entirety: Chapter 25 - Section 2505 Procedures for Processing Disability Applications, Section 2507 Contesting Board Physician's Determination, Section 2509 Judicial Appeal, Section 2511 Certification of Continuing Eligibility, Section 2519 Termination of Benefits and Chapter 17 - Section 1707 Repayment of Refund of Contributions. These sections are being repealed because LA R.S. 11:144, 218 and 220 cover the same subject matter and remain in effect.

In addition, the proposed rule change adds a provision that allows the Executive Director of LASERS to make an exception, on a case-by-case basis, to the requirement that a vendor shall submit only one deduction authorization file per month. Finally, the proposed rule removes the provision that a vendor must report changes in its company status or principal officers to LASERS.

#### **II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

Implementation of the proposed changes will have no effect on revenue collections of state or local governmental units.

#### **III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)**

The proposed rule change may benefit vendors that prefer to submit more than one deduction authorization file per month by providing that an exception to the "only one file per month" requirement can be made by the Executive Director of LASERS. Additionally, all vendors will be relieved of the requirement to report changes in its company status or principal officers.

#### **IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)**

The proposed rule has no known effect on competition and employment.

Cindy Rougeou  
Executive Director  
1809#026

Evan Brasseaux  
Staff Director  
Legislative Fiscal Office

# Potpourri

## POTPOURRI

### Department of Natural Resources Office of Conservation

#### Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Albert F. Upchurch	Caddo Pine Island	S	Upchurch	001	148391
Cohen & Kosovitz	Caddo Pine Island	S	Muslow	003	24234
Cohen & Kosovitz	Caddo Pine Island	S	Muslow Oil Co	004	24711
Gulf Lease Investments, Inc.	Monroe	M	West	001	93364
J. E. Bridges	Monroe	M	J E Bridges	001	91411
James M. Conningham Inc.	Crowley	L	Michel Leger Swd	003	58542
Jerry G Garner	Monroe	M	J W Kerr Carbon	001	7470
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	001	137405
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	002	137406
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	003	137407
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	004	137408
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	005	137491
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	006	137492
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	007	137508
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	008	137556

Operator	Field	District	Well Name	Well Number	Serial Number
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	A001	137767
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	A002	137768
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	A003	137836
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	A004	137837
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Fairbanks	001	137949
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Fairbanks	002	137950
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Fairbanks	003	137951
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Fairbanks	004	137972
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	B002	138433
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	B001	138434
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	B005	138504
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Miles	006	138527
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Miles	007	138528
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Fairbanks	B001	138533
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Fairbanks	B002	138560
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Fairbanks	B003	138561
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Miles	009	138622
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Fairbanks	B004	138682

Operator	Field	District	Well Name	Well Number	Serial Number
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Fairbanks	B005	138683
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Miles	010	138690
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Miles	012	138691
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Miles	008	138721
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Fairbanks	B006	138722
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Miles	011	138781
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	009	139482
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	010	139571
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	011	139572
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	012	139573
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling	013	139833
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling A	001	140254
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling A	002	140255
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling A	003	140321
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling A	004	140322
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling A	005	140323
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Miles	001	140338
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Miles	002	140339
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Miles	003	140340
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Miles	004	140341

Operator	Field	District	Well Name	Well Number	Serial Number
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling A	006	140368
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Grayling A	007	140369
Luffey-Stinson Gas Corporation	Monroe	M	Navarro Miles	005	140568
Luffey-Stinson Gas Corporation	Monroe	M	Olinkraft	002	143125
Luffey-Stinson Gas Corporation	Monroe	M	Olinkraft	003	143126
Luffey-Stinson Gas Corporation	Monroe	M	Monterey	001	143488
Luffey-Stinson Gas Corporation	Monroe	M	Monterey	003	143490
Luffey-Stinson Gas Corporation	Monroe	M	Olinkraft A	003	143604
Luffey-Stinson Gas Corporation	Monroe	M	Olinkraft A	004	143605
Luffey-Stinson Gas Corporation	Monroe	M	Olinkraft A	002	143606
Luffey-Stinson Gas Corporation	Monroe	M	Monterey	004	143696
Luffey-Stinson Gas Corporation	Monroe	M	Monterey	005	143697
Luffey-Stinson Gas Corporation	Monroe	M	Monterey	006	143706
Luffey-Stinson Gas Corporation	Monroe	M	Olinkraft A	005	143822
Luffey-Stinson Gas Corporation	Monroe	M	Olinkraft A	006	143823
Luffey-Stinson Gas Corporation	Monroe	M	La Gas Lands	001	143912
Luffey-Stinson Gas Corporation	Monroe	M	Olinkraft A	007	143913
Luffey-Stinson Gas Corporation	Monroe	M	Olinkraft A	009	143960
Luffey-Stinson Gas Corporation	Monroe	M	Monterey	009	144077
Luffey-Stinson Gas Corporation	Monroe	M	Olinkraft A	011	144130



Operator	Field	District	Well Name	Well Number	Serial Number
Luffey-Stinson Gas Corporation	Monroe	M	Monterey	010	144131
Luffey-Stinson Gas Corporation	Monroe	M	Olinkraft A	012	144219
Luffey-Stinson Gas Corporation	Monroe	M	Monterey	007	146078
Luffey-Stinson Gas Corporation	Monroe	M	Monterey	015	146079
Luffey-Stinson Gas Corporation	Monroe	M	Monterey	016	146301
Luffey-Stinson Gas Corporation	Monroe	M	Monterey	017	146302
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 29	007	151200
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 29	002	152009
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 31	001	153067
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 31	002	153994
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 31	003	154217
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 31	004	154664
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 29	001	154673
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 31	005	154689
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 31	006	154690
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 29	004	154714
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 29	005	154721
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 29	006	155678
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 29	003	155934
Luffey-Stinson Gas Corporation	Monroe	M	Exxon Fee A	004	165174

Operator	Field	District	Well Name	Well Number	Serial Number
Luffey-Stinson Gas Corporation	Monroe	M	Exxon Fee A	006	165175
Luffey-Stinson Gas Corporation	Monroe	M	Exxon Fee A	008	165176
Luffey-Stinson Gas Corporation	Monroe	M	Exxon Fee A	001	165272
Luffey-Stinson Gas Corporation	Monroe	M	Exxon Fee A	003	165274
Luffey-Stinson Gas Corporation	Monroe	M	Exxon Fee A	005	165275
Luffey-Stinson Gas Corporation	Monroe	M	Exxon Fee A	007	165276
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 31	007	173457
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 31	009	174139
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 31	008	174173
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 31	010	174174
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 31	011	175039
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 31	012	175099
Luffey-Stinson Gas Corporation	Monroe	M	Exxon 29	008	175100
Luffey-Stinson Gas Corporation	Monroe	M	Olinkraft B	001	176555
Luffey-Stinson Gas Corporation	Monroe	M	Monterey A	001	176556
Luffey-Stinson Gas Corporation	Monroe	M	Monterey A	002	176631
Luffey-Stinson Gas Corporation	Monroe	M	Dean A	001	178658
Luffey-Stinson Gas Corporation	Monroe	M	Usa A	002	181990
Luffey-Stinson Gas Corporation	Monroe	M	C S Roan	001	188863
Luffey-Stinson Gas Corporation	Monroe	M	C S Roan	002	188864

Operator	Field	District	Well Name	Well Number	Serial Number
Luffey-Stinson Gas Corporation	Monroe	M	C S Roan	003	188865
Luffey-Stinson Gas Corporation	Monroe	M	F R Rogers	001	188866
Luffey-Stinson Gas Corporation	Monroe	M	C S Roan	005	189096
Luffey-Stinson Gas Corporation	Monroe	M	F R Rogers	002	189098
Luffey-Stinson Gas Corporation	Monroe	M	F R Rogers	003	189099
Luffey-Stinson Gas Corporation	Monroe	M	F R Rogers	004	189100
Luffey-Stinson Gas Corporation	Monroe	M	F R Rogers	005	189101
Luffey-Stinson Gas Corporation	Monroe	M	F R Rogers	006	189102
Luffey-Stinson Gas Corporation	Monroe	M	J C Edwards Estate	001	189496
Luffey-Stinson Gas Corporation	Monroe	M	J C Edwards Estate	002	189497
Luffey-Stinson Gas Corporation	Monroe	M	J C Edwards Estate	003	189498
Luffey-Stinson Gas Corporation	Monroe	M	J C Edwards Estate	004	191994
Luffey-Stinson Gas Corporation	Monroe	M	Shackleford	001	192814
Luffey-Stinson Gas Corporation	Monroe	M	Shackleford	002	192815
Luffey-Stinson Gas Corporation	Monroe	M	Shackleford	004	192959
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	001	193562
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	001	193563
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	001	193564
Luffey-Stinson Gas Corporation	Monroe	M	Exxon E	001	193565
Luffey-Stinson Gas Corporation	Monroe	M	Manville 5	002	195213

Operator	Field	District	Well Name	Well Number	Serial Number
Luffey-Stinson Gas Corporation	Monroe	M	Manville 8	001	195214
Luffey-Stinson Gas Corporation	Monroe	M	Manville 8	002	195215
Luffey-Stinson Gas Corporation	Monroe	M	Manville 32	001	195216
Luffey-Stinson Gas Corporation	Monroe	M	Manville 32	003	195218
Luffey-Stinson Gas Corporation	Monroe	M	Manville 32	004	195219
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	002	195864
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	002	195865
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	002	195866
Luffey-Stinson Gas Corporation	Monroe	M	Exxon E	002	195867
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	003	197143
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	003	197144
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	003	197145
Luffey-Stinson Gas Corporation	Monroe	M	Exxon E	003	197146
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	004	197280
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	004	198849
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	004	198850
Luffey-Stinson Gas Corporation	Monroe	M	Exxon E	004	198851
Luffey-Stinson Gas Corporation	Monroe	M	J C Edwards Estate	006	199563
Luffey-Stinson Gas Corporation	Monroe	M	J C Edwards Estate	007	199564
Luffey-Stinson Gas Corporation	Monroe	M	Manville 32	005	199567

Operator	Field	District	Well Name	Well Number	Serial Number
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	005	199863
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	005	199864
Luffey-Stinson Gas Corporation	Monroe	M	Exxon E	005	199867
Luffey-Stinson Gas Corporation	Monroe	M	Oliver Thompson	001	199970
Luffey-Stinson Gas Corporation	Monroe	M	Oliver Thompson	002	199971
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	006	200126
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	006	200288
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	006	200289
Luffey-Stinson Gas Corporation	Monroe	M	Exxon E	006	200290
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	007	200779
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	008	200780
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	007	200992
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	008	200993
Luffey-Stinson Gas Corporation	Monroe	M	Exxon E	007	200994
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	007	201079
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	008	201080
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	009	204959
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	009	204960
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	010	204961
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	009	204962

Operator	Field	District	Well Name	Well Number	Serial Number
Luffey-Stinson Gas Corporation	Monroe	M	Exxon E	008	204963
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	011	205102
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	010	205103
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	010	205706
Luffey-Stinson Gas Corporation	Monroe	M	Exxon E	010	205707
Luffey-Stinson Gas Corporation	Monroe	M	Exxon E	011	205708
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	012	205810
Luffey-Stinson Gas Corporation	Monroe	M	Crow Etal	001	206221
Luffey-Stinson Gas Corporation	Monroe	M	Crow Etal	002	206222
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	011	206223
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	012	206224
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	013	206225
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	014	207002
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	013	207003
Luffey-Stinson Gas Corporation	Monroe	M	Exxon E	012	207005
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	015	208445
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	016	208446
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	017	208447
Luffey-Stinson Gas Corporation	Monroe	M	Exxon B	018	208448
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	015	208449

Operator	Field	District	Well Name	Well Number	Serial Number
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	016	208450
Luffey-Stinson Gas Corporation	Monroe	M	Crow Etal A	001	209226
Luffey-Stinson Gas Corporation	Monroe	M	Crow Etal A	002	209227
Luffey-Stinson Gas Corporation	Monroe	M	Exxon F	001	210517
Luffey-Stinson Gas Corporation	Monroe	M	Exxon F	002	210518
Luffey-Stinson Gas Corporation	Monroe	M	Exxon F	003	210519
Luffey-Stinson Gas Corporation	Monroe	M	Exxon F	004	210520
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	011	211526
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	012	211527
Luffey-Stinson Gas Corporation	Monroe	M	Exxon G	001	211578
Luffey-Stinson Gas Corporation	Monroe	M	Exxon G	002	211579
Luffey-Stinson Gas Corporation	Monroe	M	Exxon G	004	211581
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	017	213509
Luffey-Stinson Gas Corporation	Monroe	M	Exxon C	018	213510
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	013	213511
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	014	213547
Luffey-Stinson Gas Corporation	Monroe	M	Exxon Z	001	213840
Luffey-Stinson Gas Corporation	Monroe	M	Exxon Z	003	213842
Luffey-Stinson Gas Corporation	Monroe	M	Exxon H	001	214501
Luffey-Stinson Gas Corporation	Monroe	M	Exxon H	002	214502

Operator	Field	District	Well Name	Well Number	Serial Number
Luffey-Stinson Gas Corporation	Monroe	M	Exxon H	003	214503
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	015	215525
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	016	215526
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	019	217973
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	020	217974
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	021	217975
Luffey-Stinson Gas Corporation	Monroe	M	Exxon D	023	218050
Luffey-Stinson Gas Corporation	Monroe	M	Saltwater Disposal Well	001	971927
S. B. Evans	Pleasant	S	Cook Land Co	002	41241
Thomas L. Brady	Monroe	M	Rowland Heirs et al	003	143315
Willis C Tucker	Monroe	M	A Smith	001	1113

Richard P. Ieyoub  
Commissioner

1809#034

## POTPOURRI

### Department of Public Safety and Corrections Oil Spill Coordinator's Office

#### Notice of Restoration Planning for Oil Spill

**Action:** Notice of Intent to Conduct Restoration Planning (NOI) for Frog Lake/Bayou Sorrel Oil Spill, Iberville Parish, LA.

**Agencies:** Louisiana Oil Spill Coordinator's Office, Department of Public Safety and Corrections (LOSCO); Louisiana Coastal Protection and Restoration Authority (CPRA); Louisiana Department of Environmental Quality (LDEQ); Louisiana Department of Natural Resources (LDNR); and Louisiana Department of Wildlife and Fisheries (LDWF) (collectively, the "Trustees").

**Authorities:** The Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2701 et seq., and the Louisiana Oil Spill Prevention and Response Act of 1991 (OSPRA), La. Rev. Stat. 30:2451 et seq., are the principal federal and state statutes, respectively, authorizing designated federal and state agencies and tribal officials to act on behalf of the public to (1) assess damages for injuries to natural resources and

services resulting from a discharge of oil or the substantial threat of a discharge and (2) develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured resources. OPA implementing regulations may be found at 15 C.F.R. Part 990 and OSPRA regulations at La. Admin. Code tit. 43, pt. XXIX. By letter dated March 27, 2017, and pursuant to 33 U.S.C. § 2706(b)(3), the Governor of Louisiana designated the Trustees to act on behalf of the public under OPA. ORB Exploration, L.L.C. (“ORB”), as the owner and operator of the flowline, is the identified Responsible Party and is therefore liable according to 33 U.S.C. § 2702 and La. Rev. Stat. 30:2480 for any natural resource damages resulting from the Incident.

**Purpose:** As required by 15 C.F.R. §§ 990.41 and 990.42, the Trustees have determined that impacts to natural resources and services resulting from the unauthorized discharge of oil from a ruptured flowline near Bayou Sorrel, Louisiana (hereinafter, the “Incident”), reported to the Louisiana Emergency Hazardous Materials Hotline on January 03, 2013, (La. NRDA case file # LA2013\_0103\_1513) warrant proceeding with a Natural Resource Damage Assessment (NRDA) to pursue restoration for this Incident. In accordance with 15 C.F.R. § 990.44 and L.A.C. 43:XXIX.123, the Trustees are issuing this NOI to inform the public that they are proceeding to the Restoration Planning Phase of the NRDA, during which trustees evaluate information on potential injuries and use that information to determine the need for, type of, and scale of restoration as described in subpart E of 15 C.F.R. Part 990. The Trustees will be opening an Administrative Record (AR) pursuant to 15 C.F.R. § 990.45 and L.A.C. 43:XXIX.127. The AR will be available to the public and document the basis for the Trustees’ decisions pertaining to injury assessment and selection of restoration alternatives.

**Summary of Incident:** On January 03, 2013, a discharge of crude oil as a result of a ruptured subsurface flowline in the Atchafalaya Basin was reported to the State Police’s Louisiana Emergency Hazardous Materials Hotline. The responsible party was identified as ORB. It is estimated that in excess of 1,000 barrels of oil were released into the bald cypress-tupelo swamp habitat. Response operations included an in-situ burn of the oil, flushing, skimming, and application of hard boom and sorbents. Heavy equipment was used to access the site and clean up the oil. Multiple trails through the swamp were clear-cut for track buggy and airboat access during response. Response actions had to adapt to the changes in water level as the impacted area of swamp experienced periods of flooding and drying throughout the year. The source of the spill was a flowline that was buried 4 feet underground, resulting in oil that became trapped in the subsurface sediments. During wet periods, the oil would rise to the water surface as the water level increased. During dry periods, trenches were dug in the soil to allow oil trapped in the sediments to travel into the trenches via gravity, and to be collected with sorbents. In total, the response lasted for 2.75 years. Over 60 acres of bald cypress-tupelo swamp habitat and its natural resource services were adversely impacted by oil and response actions.

The Trustees began the Pre-assessment/field investigation Phase of the NRDA in accordance with 15 C.F.R. § 990.43 and L.A.C. 43:XXIX.117 to determine if they had jurisdiction to pursue restoration under OPA and OSPRA, and, if so, whether it was appropriate to do so. During the Pre-assessment Phase, the Trustees collected and analyzed, and are continuing to analyze, the following: (1) data reasonably expected to be necessary to make a determination of jurisdiction and/or a determination to conduct restoration planning, (2) ephemeral data, and (3) information needed to design or implement anticipated assessment activities as part of the Restoration Planning Phase. Activities included, among other things, collection of qualitative, quantitative and observational data about oiled habitats and wildlife, and sediment and oil sample collection and analysis.

Under the NRDA regulations applicable to OPA and OSPRA, the Trustees prepare and issue a Notice of Intent to Conduct Restoration Planning (NOI) if they determine conditions that confirm the jurisdiction of the Trustees and the appropriateness of pursuing restoration of natural resources have been met. This NOI announces that the Trustees have made the determination to proceed with restoration planning to evaluate, assess, quantify, and develop plans for restoring, rehabilitating, replacing, and/or acquiring the equivalent of injured natural resources and losses resulting from the Incident. The restoration planning process will include collection of information that the Trustees determine is appropriate for identifying and quantifying the injuries and losses of natural resources, including services, and to determine the need for, and the type and scale of restoration alternatives.

#### **Determinations**

**Determination of Jurisdiction:** The Trustees have made the following findings pursuant to 15 C.F.R. § 990.41 and LAC 43:XXIX.101:

1. The Incident resulted in the discharge of oil into or upon navigable waters of the United States. Such occurrence constitutes an “incident” within the meaning of 15 C.F.R. § 930.30.
2. The Incident was not authorized under a permit issued pursuant to federal, state, or local law; was not from a public vessel; and was not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. § 1651, et seq.
3. Natural resources under the trusteeship of the Trustees have been injured as a result of the Incident.

As a result of the foregoing determinations, the Trustees have jurisdiction to pursue restoration under OPA and OSPRA.

**Determination to Conduct Restoration Planning:** The Trustees have determined, pursuant to 15 C.F.R. § 990.42(a), that:

1. Data collected pursuant to 15 C.F.R. § 990.43 demonstrate that injuries to natural resources have resulted from the Incident, as described above.
2. The response actions did not adequately address the injuries resulting from the Incident.
3. Feasible primary and/or compensatory restoration actions exist to address injuries from the Incident.

Based upon the foregoing determinations, the Trustees intend to proceed with restoration planning for this Incident.

**Public Participation:** The Trustees invite the public to participate in restoration planning for this Incident. Public participation in decision-making is encouraged and will be facilitated through a publically available AR (described above) and publication of public notices in the *Louisiana Register*. Opportunities to participate in the process will be provided by the Trustees at important junctures throughout the planning process and will include requests for input on restoration alternatives and review of planning and settlement documents. Public participation is consistent with all State and Federal laws and regulations that apply to the NRDA

process, including Section 1006 of OPA, 33 U.S.C. § 2706; the regulations for NRDA under OPA, 15 C.F.R. Part 990; Section 2480 of OSPRA, La. Rev. Stat. 30:2480; and the regulations for NRDA under OSPRA, La. Admin. Code tit. 43, pt. XXIX, ch. 1.

**For Further Information:** For more information or to view the AR please contact the Louisiana Oil Spill Coordinator's Office, P.O. Box 66614, Baton Rouge, LA 70896, (225) 925-6606 (Attn: Gina Muhs Saizan).

Karolien Debusschere  
Deputy Coordinator

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